Australian Government
Department of Finance

Australian Government Contract Management Guide

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Introduction

To deliver its programs, the Australian Government awards on average 70,000 contracts each year with an annual total value in the range of $40 billion to $70 billion[1]. Good contract management is an essential component in achieving value for money for Government procurements.

This guide provides practical process guidance to support effective contract management at a practitioner level for Commonwealth entities. The information contained in this guide provides general advice only, does not form Commonwealth policy, is not a substitute for legal advice and should be read in conjunction with your entity-specific policy or guidance on contract management.

This guide is for the management of commercial contracts for procurements. It may be useful for other arrangements such as grants, memorandums of understanding (MoU) or investments as they generally require similar management activities to the processes in this guide.

Each contract must be managed in accordance with its terms and conditions. Should an issue arise in relation to a specific contract:

- you may want to seek advice from your central procurement area, or
- in some situations, you may want to seek legal advice.

How to use this guide

The guide is divided into phases and within each phase we have listed the activities and considerations that will help you to manage your contract effectively. Along with information about the activity, you may also see:

- key steps
- additional information around the activity
- tips
- further reference material.

Additional information

Tips

Further reference material

The guide helps you to identify different levels of complexity for contracts based on characteristics and risk profiles. A table at the start of each phase provides guidance on which activities are required for each level of complexity.

1 Figures available on the Department of Finance Website, Statistics on Australian Government Procurement Contracts reported from AusTender. These figures only refer to procurements valued at $10,000 and above.

What is a contract?

A contract is a legally enforceable agreement between two or more parties that details each party's rights and obligations in performance of that contract. Some examples of common contracts used by Commonwealth entities are detailed in this guide.

At its most basic, a contract requires an offer, acceptance of that offer and consideration:

- the parties to the contract must have both intended to be legally bound
- the terms of the contract must be certain and
- each party must have the capacity to enter into the contract.

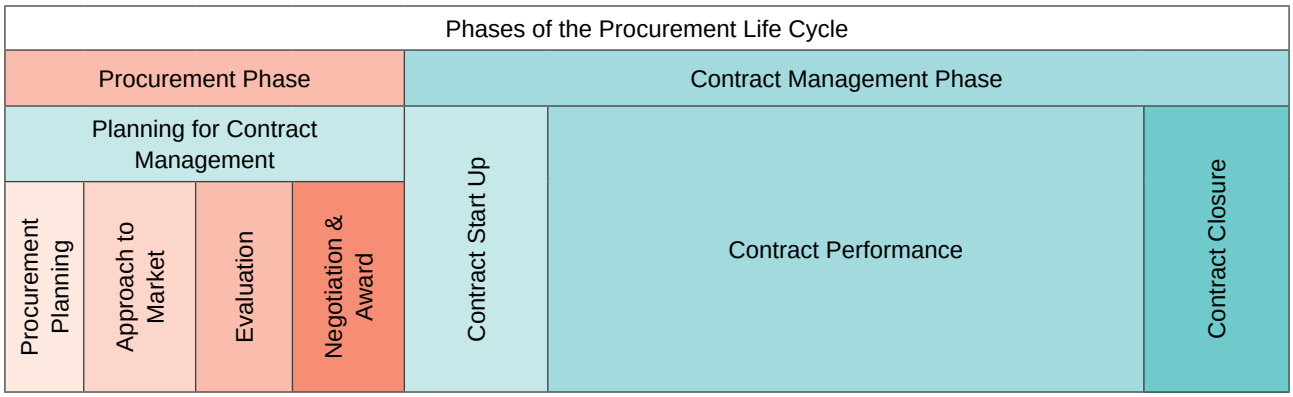
For most contracts, there is no particular form that is required. While a contract does not necessarily need to be in writing to be enforceable, the Commonwealth Procurement Rules (CPRs) paragraph 7.4 state that contracts should be in written form.

What is contract management?

Contract management refers to all the activities undertaken by an entity, after the contract has been signed or commenced, to manage the performance of the contract (including any corrective action) and to achieve the agreed outcomes.

Each contract will be different. The aim of contract management is to ensure that all parties meet their obligations to deliver the objectives of the contract. In a simple procurement, the focus of contract management may be on ensuring the goods or services purchased are provided on time, to the agreed standard, at the agreed location and for the agreed price. For a more complex or strategic contract, contract management may also look at other aspects of the contract, such as performance management or continuous improvement regimes, integration with existing systems or assets, implementation of technological or industry advancements or innovations.

It is important that contracts are managed consistently and actively throughout their life in accordance with their terms. This will ensure that supplier performance is satisfactory, stakeholders are well informed, and all contract requirements are met thereby ensuring that the contract delivers the anticipated value for money.



Contract management can be distilled to the following elements:

- **Contract Governance**: establishing the stakeholder engagement mechanisms, oversight arrangements, systems, processes, decision making and reporting.
- **Performance Management**: the measuring, monitoring, and assessment against agreed performance measures to enable early warning of, and response to, performance issues. The monitoring and assessment of deliverables to enable acceptance and achieve contract outcomes.
- **Supplier Relationship Management**: includes putting in place collaborative engagement mechanisms with the contractor.
- **Contract Administration**: the administrative activities undertaken to support day-to-day contract activities, meet legislative requirements for records management, and establish an audit trail to meet transparency requirements.[2]

2 Department of Defence – Defence Contract Management Handbook Version 1.0 – 02 July 2018

Who should use this guide?

If you are involved in any part of managing a contract you will find this guide helpful.

You might pay invoices, provide technical advice, liaise with suppliers, obtain quotes, manage contracts or be the delegate who approves procurement activities. In fact, if you are involved in any way with government contracts you need to know your obligations and effective management techniques. This guide will help.

The legislative and policy framework

When managing contracts, officials operate in a complex environment of legislation and Commonwealth policy.

While the key features of these frameworks are set out below, this information is only provided as an overview. If specific contract management issues arise, you will need to seek contextual legal and/or procurement advice.

Resource Management Framework

The Resource Management Framework consists of the legislation and policy governing the management of the Commonwealth's resources.

Resource Management Framework includes but is not limited to:
• **Public Governance, Performance and Accountability Act 2013 (PGPA Act)**
• **Public Governance, Performance and Accountability Rule 2014 (PGPA Rule)**
• **Commonwealth Procurement Rules (CPRs)**
• **Accountable Authority Instructions (AAIs)**
• **Resource Management Guides** (such as RMG-400 Commitment of Relevant Money, RMG-411 Grants, procurements and Other Financial Arrangements, RMG-414 Contingent Liabilities, Indemnities, Guarantees, Warranties on behalf of the Commonwealth)

The Public Governance, Performance and Accountability Act 2013 (PGPA Act) underpins the Resource Management Framework.

Under the PGPA Act, the accountable authority of an entity must govern the entity in a way that promotes the proper use and management of public resources for which the authority is responsible (PGPA Act section 26). 'Proper' is defined as efficient, effective, economical and ethical (PGPA Act section 8). One of the ways accountable authorities may address this requirement is by issuing accountable authority instructions to officials (PGPA Act section 110).

Accountable authorities are also able to enter, vary and administer arrangements (which include contracts, agreements, deeds and understandings) relating to the affairs of their entity (PGPA Act section 23(1)). The accountable authority is able to delegate this power to officials.

The PGPA Act also imposes a number of general duties on officials, including a duty of care and diligence and a duty to act honestly, in good faith and for a proper purpose (PGPA Act section 26). When exercising powers delegated to them, and performing their functions and duties, officials need to ensure they are complying with these general duties, as well as any directions accompanying delegations and applicable accountable authority instructions.

These requirements will all be relevant to officials with responsibility for contract management.

Procurement Policy Framework

The procurement policy framework, set out in the Commonwealth Procurement Rules (CPRs), is a subset of the Resource Management Framework. The CPRs are the core of the procurement framework.

Procurement Policy Framework includes:
• **Commonwealth Procurement Rules (CPRs) 2019**
• **Resource Management Guides** (such as RMG-416 Facilitating Supplier Payment through Payment Card, RMG-417 Supplier Pay On-Time or Pay Interest Policy)
• **Procurement Connected Policies** (as set out in RMG-415 Commonwealth Grants and Procurement Connected Policies, which include the Indigenous Procurement Policy, the Workplace Gender Equality Procurement Principles, the Australian Industry National Participation Framework and the Building Code 2013)
• **Department of Finance web based guidance available at:** www.finance.gov.au/procurement
• **Whole of Government templates and tools** (such as AusTender, the Commonwealth Contracting Suite (CCS) the CCS Deed of Standing Offer (DoSO) templates and BuyRight - available at www.finance.gov.au/procurement)
• **Entity specific guidance and tools, such as Accountable Authority Instructions (AAIs), better practice guides, handbooks and templates**

The CPRs provide the policy framework for process requirements in relation to procurement. Achieving value for money is a key component of the CPRs.

Value for money in a procurement process requires a comparative analysis of all the relevant costs and benefits of each proposal throughout the whole procurement cycle. This core principle is supported by open-competition, non-discrimination, efficiency, effectiveness, economical and an ethical use of resources.

Within a procurement process, the delegate will have approved a proposal based on its value for money proposition. Value for money is first assessed at the evaluation phase of a procurement but is not fully realised until the completion of the contract. Effective contract management will assist in achieving the realisation of the value for money proposition. This underpins the contract management practices set out in this guide. For more information on value for money, see CPRs section 4.

Other legal requirements

Once signed by both parties, your contract is a legally enforceable document, governed by Australian contract law. This means there are legally binding obligation and rights assigned to both parties. Contract management is the process by which you ensure that each party upholds their obligations under the contract.

There are a range of other policy, legislative and regulatory requirements that may be relevant to your contract depending on the subject matter, value and/or location of the contract, such as:

- privacy
- work health and safety
- confidentiality
- taxes and other duties
- security
- quality and fitness of purpose
- records management.

Many of these requirements will be addressed (either directly or indirectly) in the contract. More detailed information on common contract provisions is included in Appendix 1.

Australian Public Service (APS) conduct requirements

APS Conduct requirements include:
• **Public Service Act 1999 (section 10 – APS Values, section 13 – Code of Conduct) (PS Act)**
• **Crimes Act 1914**

Employees of the Australian Public Service (APS) are trusted by the Government and the community to undertake important work on their behalf. With this trust comes a high level of responsibility that should be matched by the highest standards of ethical behaviour.

The APS Values, APS Employment Principles and the APS Code of Conduct set out the standard of behaviour expected of entity heads and APS employees. They give the public confidence in the way public servants behave including in their exercise of authority. All employees must make themselves familiar with their obligations under the PS Act[3].

If you do not comply with the requirements of the PS Act or the Crimes Act, you may face criminal, civil or administrative proceedings. Australian Government employees engaged under other enabling legislation such as the Australian Defence Force are bound by similar codes of conduct.

Where contracted staff are involved in managing contracts, they are, generally, obliged under their employment contract to comply with all Commonwealth laws and policies, declare conflicts of interest and not act fraudulently. If they breach their contract conditions, an entity can seek remedies under the employment contract or they may face similar legal proceedings.

3 Australian Public Service Commission - APS Values and Code of Conduct in practice. https://www.apsc.gov.au/aps-values-and-code-conduct-practice

What type of contract are you managing?

This guide supports people who manage a wide range of contracts, including those formed as follows:

Commonwealth Contracting Suite (CCS) Contract

- The CCS is an online interactive suite of smart forms designed to assist procurement officials prepare procurement documentation for Commonwealth procurement valued under $1 million.
- The CCS is mandatory for use by non-corporate Commonwealth entities (NCE) for procurement under $200,000 (including GST) except for specific circumstances as detailed in RMG-420 Mandatory use of the Commonwealth Contracting Suite for procurement under $200,000. Corporate Commonwealth entities (CCE) are encouraged to use the CCS as appropriate.
- If your contract has been created through the CCS then it will be a short contract with simplified terms and language and will be easy to understand with regard to responsibilities and obligations for both you and the supplier.
- The CCS (which incorpoates the Commonwealth Contract Terms) is drafted in plain English and aims to make contract management as easy as possible.

Entity's Standard Form Contract

- Some larger entities have developed their own contract templates. These may be longer form contracts for when the CCS is not being used. This means that contracts will be standardised and reflect the entity's approach to procurement.
- Entities need to ensure that templates are regularly updated to reflect any changes to legislation or policy.
- Contextual advice on managing these contracts will generally be available in your entity.

Digital Sourcing Model Contract

- The Digital Transformation Agency (DTA) has a suite of templates. These are suitable for sourcing information and communication technology (ICT) products and services that are not covered by a whole of Government arrangement.
- More information on these templates is available from the DTA website. Contact DTA for contexutual contract management advice.

Bespoke Purpose Designed Contract

- Occasionally, an entity may have a requirement that raises issues or involves risks or requirements that require a particular approach. This will require the entity to develop a contract that reflects these requirements and will often involve input from legal, procurement and technical specialists. These are usually high risk or specialised contracts.
- Management of these contracts may require assistance from specialist advisers.

Standing Offer Arrangements (Panels)

- Standing offer arrangements are established by entities for frequently sourced goods or services. A Standing Offer Arrangement consists of a Deed of Standing Offer (DoSO) with a supplier that enables the entity to obtain particular goods or services where the prices and contractual terms are already agreed. It is common for entities to put in place standing offer arrangements with a number of suppliers for the same or similar services – this is commonly referred to as a 'panel'. Generally the DoSO will be the same for each supplier under the panel. The person (or team) who manages the standing offer arrangement is generally referred to as the panel manager.
- Procuring from a standing offer arrangement provides efficiencies as it mitigates the ongoing costs to the supplier and the entity to continually tender for frequently used goods or services.
- Most standing offer arrangements will provide for the entity to issue an official order or a work order to a supplier for specific goods or services – with this forming a contract between the parties for those goods or services. Value for money must still be considered each time goods or services are purchased under a standing offer arrangement and the entity issuing the official order is responsible for its management to ensure that the value for money is achieved.
- Details of current standing offer arrangements can be found on the AusTender website.

Coordinated Procurement Arrangements (eg whole of Government)

- Whole of Government coordinated procurement arrangements are established for a number of reasons, including to give effect to policy decisions, to collectively procure goods and services in common use across entities to leverage the purchasing power of the Australian Government, to improve consistency and control, and to deliver savings and efficiencies.
- Whole of Government arrangements may take the form of a contract or standing offer. These contracts and arrangements have been variously established by lead entities including the Department of Finance and the Digital Transformation Agency. Contract management processes vary for different arrangements. If you are managing your entity's purchasing from a whole of Government arrangement, you will need to clearly understand the processes for purchasing from that panel. The panel management team will be able to assist you.
- Most whole of Government arrangements are mandatory for use by non-corporate Commonwealth entities and opt in for corporate Commonwealth entities. A list of these can be found on the Department of Finance website.

Cooperative Procurement Arrangements (with other entities)

- Sometimes, a number of different entities will have a similar requirement for goods or services. Cooperative procurement enables such entities to obtain goods or services jointly through the one arrangement. This can be achieved through a joint approach to the market and/or when an entity establishes a contract or standing offer that allows other entities to access it (often referred to as 'piggybacking').
- Cooperative procurement can make better use of resources across entities and also for potential suppliers. Efficiencies may be derived from several entities coming together and implementing and maintaining one arrangement in lieu of many. This can reduce the number of administrative processes and share the procurement and contract management process workload. It may also be able to leverage better prices and service arrangements and can reduce the number of tenders for which a potential supplier will need to bid for.
- However, care needs to be taken to ensure that there is sufficient alignment between each entity's requirements to ensure that the cooperative procurement delivers value for money for each entity in the context of their particular requirements.

You should ensure that the form and content of each contract reflects the risk and/or complexity of the relevant transaction. It is Commonwealth policy that smaller purchases under $10,000 be contracted directly as a credit card purchase (see RMG-416 Facilitating Supplier Payment through Payment Card). Simple purchases may be contracted through a purchase order. There may also be instances where you will be required to sign an agreement using the supplier's terms such as venue hire or online purchases.

These purchasing methods are still contracts and as such represent a legally binding agreement between the parties however, given their low value and low risk they will generally require lower levels of contract management.

Purchase order

- For transactional or routine purchases an entity may issue a purchase order. This could be based on the Commonwealth Purchase Order Terms (available on the Department of Finance website) and contain a simple description of the goods or services required. Generally, this is issued to a supplier and does not require their signature. A purchase order will still create a legally binding contract but is unlikely to require the level of management required by more complex contracts.

Credit card purchase

- The Australian Government payment card policy promotes payment cards as the preferred payment mechanism for eligible payments to suppliers for amounts under $10,000. This is subject to the supplier being able to accept payment by credit card. Where practicable, payment should be made at the point of sale. A tax invoice (receipt) must be provided by the supplier for the payment. In this instance, a formal written contract is not required. Further guidance on this policy can be found in RMG-416 Facilitating Supplier Payment through Payment Card.
- Payments by credit card rarely require complex contract management processes.

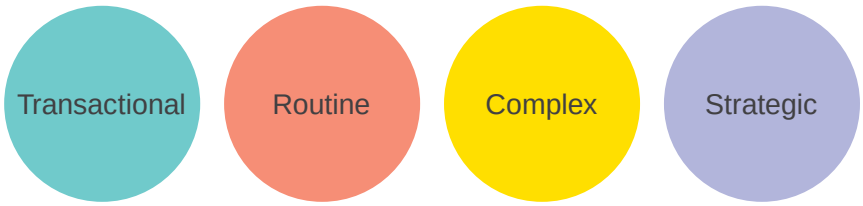
Vendor terms

- Acceptance of a vendor agreement is also a form of contract. These are often found with requirements such as venue hire, software licensing, product warranty and when you click on the 'I agree' to online terms and conditions. These will generally contain clauses that will require the entity to sign up to contingent liabilities.
- Annex 1 provides additional information on a range of potential contract management issues including contingent liability provisions.

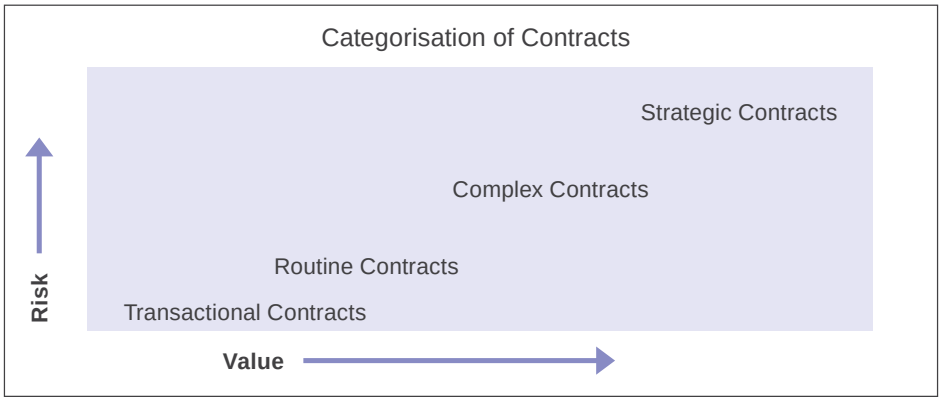
How complex is your contract?

The following terms are used in this guide to describe contracts based on the level of complexity, the risk profile and the value. These terms are intended as a guide only – each entity will have its own context and operational environment that will inform its approach to assessing and categorising risk.

In this guide we use the following terms to categorise contracts:



Determining the appropriate level of contract management required for your contract allows you to focus your attention on the key activities within the management of your contract, in a way that is proportional to the risk profile of your contract.



The table below identifies the characteristics or qualities of each type of contract. You should assess which category your contract aligns with. These qualities are only indicators that your contract may fall into a certain category. Your contract does not have to meet all the characteristics and may meet characteristics from more than one category. You will need to use judgement as to whether your contract fits into one category or another. If you are deciding between two categories, go with the categorisation with the higher risk level.

The tables at the beginning of the sections for each contract management phase will assist you in identifying which activities are appropriate based on this categorisation.

Table 1- Categorisation of contracts

The characteristics below are only indicators of each type of category. You will need to assess which category aligns more closely with your contract

Qualities	Transactional	Routine	Complex	Strategic
Key Defining Factors	The goods or services are: • generally low value • readily commercially available, off the shelf • able to be readily sourced from numerous suppliers • do not require any special handling, modification or adaptation.	The goods or services are: • generally below the procurement threshold or may be above the threshold for large quantities or long term purchases • readily commercially available • able to be sourced from numerous suppliers • do not require any special handling, modification or adaptation.	The goods or services are: • generally valued above the procurement threshold • commercially available • able to be sourced from a number suppliers • will most likely have a statement of work or complex specification • may require some special handling, modification or adaptation.	The goods or services are: • generally high value and high complexity but some lower value procurements may be strategic for reasons other than price • sourced via a complex open tender or staged sourcing approach • available from a limited number of suppliers in the market • may need to be created or developed specifically for the procuring entity or require extensive modification or adaptation if commercially available • will have an involved statement of work or complex specifications.

Qualities	Transactional	Routine	Complex	Strategic
Risk Profile	Very low risk. Formal risk assessment not required.	Generally low risk. May need to identify and analyse risks. Consider current controls and if any additional actions are required. Findings and actions will need to be documented.	May present medium risks. Will need a formalised risk assessment or managment plan that will require: - identification - analysis (likelihood / consequence) - evaluation (controls and prioritisation) - treatments - documentation of findings and actions.	May present high risks. Will need a formalised risk management plan that will require: - identification - analysis (likelihood / consequence) - evaluation (controls and prioritisation) - treatments - documentation of findings and actions. Risks will need to be actively managed.
Delivery	Usually transactional contracts will involve a single delivery to one location.	It may involve a single delivery of higher cost items or deliveries to a number of sites over longer periods.	Delivery will most likely be phased over a number of milestone events over longer periods. Formalised acceptance procedures may be required.	Delivery will most likely be phased over a number of milestone events over longer periods. Acceptance will be based on formalised procedures within the contract.
Payment	Payment will often be made by credit card, or on invoice immediately after the delivery and acceptance of the goods or services.	Payment is usually made in arrears on invoice after the delivery and acceptance of the goods or services and total costs may be progressively paid over time as deliveries are received.	Payment arrangements may be more complex, and will generally include partial payments, milestone payments or other staged payment approaches. These contracts may also contain a reduction in payment for under performance.	Payment arrangements are usually complex and will include staged payment, milestone payment and/or earned value payment approaches. These contracts may also contain incentive payments or reduction in payment for under performance.
Performance Monitoring	Performance monitoring is based on common sense checking that the goods or services were as ordered and correctly received.	Performance monitoring is usually based on common sense checking, supported by processes such as spot audits, acceptance checks and referring to the contract to be sure that the goods or services were as specified and correctly received.	Performance monitoring is usually formalised, and may involve progress reports from the supplier, progress and performance meetings with the supplier and may draw on performance indicators or service level agreements in the contract.	Performance monitoring is formalised, and usually involves progress reports from the supplier, progress and performance meetings with the supplier, and draws on performance indicators or service level agreements in the contract.
Timeframe	Short term.	These contracts usually extend for short periods, typically between a few days up to a couple of months but may also involve larger quantities of off-the-shelf goods or services over longer periods.	These contracts typically extend for anywhere from a few months to several years.	These contracts are generally longer term and may run for several years.

Qualities	Transactional	Routine	Complex	Strategic
Contracting Vehicle	Use purchase order, email or verbal acceptance of quote.	Use purchase order, CCS contract or may be sourced from a panel.	CCS contract, purpose-built contract or may be sourced from a panel. For ICT requirements, the digital sourcing contract templates (from DTA) may be appropriate.	Purpose built bespoke contract or entity specific template. For ICT requirements, the digital sourcing contract templates (from DTA) may be appropriate.
Organisational Impact	These goods or services are not critical to the operation of the entity, which could operate reasonably without them.	These goods or services are not usually critical to the operation of the entity, which could operate for a reasonable period without them. There may be some inconvenience if the goods or services are delayed.	These goods or services are usually important, but not critical, to the operation of the entity or may be important in managing risks facing the entity. There would be some impact on the way the entity operates if the goods or services were delayed, and there could be considerable inconvenience, but this would not usually prevent the achievement of major entity goals.	These goods or services are vital to the achievement of major entity goals and may be significant for managing risks or seizing opportunities. There would be significant, noticeable and unacceptable impact on the way the entity operates if the goods or services were delayed.

Examples of how contracts may be categorised are below:

- Catering for a meeting or workshop would generally be transactional, however, catering for a large public event may be complex.
- Labour hire would generally be routine, however, if you have complicated security and access requirements then this may increase the level of categorisation.
- A contract for office furniture would generally be routine, however, if this is part of an office fit-out then it may be complex.
- The customisation and integration of a software system would generally be a complex contract, however, if the contract is for the development and implementation of large entity specific software applications then this may be strategic.

If you are unsure about how to categorise your contract, then contact your central procurement area for assistance.

What are the phases of contract management?

Contract management activities take place in three main phases, however, planning for contract management should happen before the contract is signed. Each phase requires very distinct activities depending on the type of contract being managed. The level of contract management should be commensurate with the complexity and risk profile of the contract you are managing. For example, transactional and routine contracts may only require simple processes compared to a complex or strategic contract. The contract management activities table at the start of each section will help you to identify which activities are appropriate for your contract. The decision on which activities should be included as part of the contract management arrangements should be made using judgement and based on the complexity and risk profile of the particular contract.

The phases of contract management are:

Phase 0 Contract Management Planning	In this phase planning activities are done together with the sourcing process. As you plan, evaluate and negotiate the contract, you need to consider the way in which the contract is drafted, delivery and acceptance issues, performance management regimes etc. Effective planning will have an impact on how the contract is managed and contribute to a successful outcome.
Phase 1 Contract Start Up	Contract Award In this phase the contract manager identifies the key roles and management activities needed to effectively manage the contract throughout its entire term. This phase should involve allocation of accountability for the different contract management activities. This enables a sensible allocation of risk and resources to the contract and helps minimise the risk of contract failure.
Phase 2 Contract Performance	In this phase the main part of the contract is performed and the required goods or services are delivered. Good contract and stakeholder management will enable the Australian Government to obtain the full benefits of the contract and achieve the value for money outcomes identified during the procurement sourcing process.
Phase 3 Contract Closure	In this phase contractual obligations and liabilities between the parties are finalised. It may also include transitioning to a new supplier for goods or services. Proper review in this phase will allow the procuring organisation to measure if value for money was achieved during the life of the contract. It also enables identification of process improvements or developments ensuring continuous improvement of the procuring organisation's processes and may contribute to better value for money in future procurements.

Phase 0 Planning for contract management

The table below lists the activities for the Planning for contract management phase. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during contract start-up phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
0.1	**Assess risk (page 13)**	Required	Required	Required	Required
0.2	**Develop a contract management plan (page 16)**	Not required	Recommended	Required	Required
0.3	**Develop risk management plan (page 17)**	Not required	Recommended	Strongly Recommended	Required
0.4	**Develop other plans if required (page 18)**	Not required	Recommended	Recommended	Strongly Recommended
0.5	**Consider and manage any contract transition issues (page 18)**	Not required	Recommended	Recommended	Strongly Recommended
0.6	**Skills development (page 19)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)

0.1 Assess risk

Managing risk is an essential part of procurement and contract management. You will need to assess the risks that may affect the performance of your contract and its ability to achieve the desired outcomes.

Risk is defined in ISO31000:2018 Risk Management as 'the effect of uncertainty on objectives'. An effect is a deviation from the expected outcome — positive or negative. Risk is often expressed as a combination of the consequences of an event and the associated likelihood of occurrence.

In contract management, **risk management** refers to the activities that you undertake to manage and control your contract with regard to risk.

Your entity will have a risk management framework and may provide a template for a risk management plan or will provide direction consistent with your framework.

Contract managers should identify the risks associated with delivering the contract and analyse the seriousness of those risks and likelihood of them occurring. The next step is to consider existing **risk controls** that are already in place and evaluate whether they are sufficient to manage the risk without taking additional measures. If not, then **risk treatments** need to be applied. The risk controls and risk treatments aim to prevent the risk from occurring (if possible), and/or to minimise the consequences if any risk events do eventuate. Obligations placed on the supplier and the allocation of responsibility for particular issues under the contract will often form part of these controls and treatments – and so effective contract management will assist with managing these risks.

As the contract manager, it is your job to deal promptly and effectively with any risk events that occur during the life of your contract. All officials with a role in managing the contract also play a part in managing risk and identifying emerging issues.

Risks may specifically relate to the goods or services you are receiving (for example, Work Health & Safety risks in a cleaning contract or using unqualified trainers to deliver training programs), or they may relate to the contract management process itself (for example loss of key staff, staff having insufficient expertise in contract management or failure to adequately check deliverables or pay invoices on time).

Shared risks should also be considered in contract management. A **shared risk** exists where more than one party is exposed to, or can significantly influence, the risk. Most contracts will involve shared risks and a key consideration will be the types and level of risk that will be assumed by each of the parties to the contract.

The Commonwealth Procurement Rules (CPRs) paragraph 8.4 note that, as a general principle, risks should be borne by the party best placed to manage them. This may be either the supplier or the procuring entity. The allocation of risks may be set out in the contract, including through the indemnities and limitations of liability.

Identified risks will be incorporated into your contract management plan or, if the risks are substantial, into a separate risk management plan.

Your approach to managing risks for individual contracts should be consistent with your entity's broader risk management framework.

Key Risk Management Terms

Risk identification is the process of finding, recognising and describing risks. Risk identification involves the identification of risk sources, risk events, their causes and their potential consequences. Risk identification can involve historical data, theoretical analysis, informed and expert opinions and stakeholder's needs.

Risk analysis is the process used to comprehend the nature of risk and to determine the level of risk. Risk analysis provides the basis for risk evaluation and decisions about risk treatment.

Risk evaluation is the process of comparing the level of risk against risk criteria, such as those commonly contained in a risk evaluation matrix (for example extreme risk, moderate risk or negligible risk). Risk evaluation assists in decisions about risk treatment.

Risk assessment refers to the process of undertaking risk identification, risk analysis and risk evaluation.

A risk control is a measure taken to modify risk. Controls are the result of risk treatment. Controls include any policy, process, device, practice or other actions designed to modify risk.

A risk treatment is a proposed control, yet to be implemented. The term 'risk treatment' can also be used to refer to the process of selection and implementation of measures to modify risk.

Risk definitions from: Commonwealth of Australia, Department of Finance, Commercial and Government Services, "Resource Management Guide 211 Implementing the Commonwealth Risk Management Policy – Guidance. https://www.finance.gov.au/comcover/risk-management/the-commonwealth-risk-management-policy/

Want to know more about risk management?

Further information about risk management is available from:

- Comcover in the *Commonwealth Risk Management Policy 2014 and Implementing the Commonwealth Risk Management Policy* https://www.finance.gov.au/comcover/risk-management/the-commonwealth-risk-management-policy/.
- Department of Finance Resource Management Guides at http://www.finance.gov.au/resource-management/index/rmg/
- Standards Australia guidance for the international standard ISO 31000:2018 Risk Management –Guidelines. https://www.standards.org.au/standards-catalogue/international/iso-slash-tc--262/iso--31000-colon-2018

When identifying risks it may be useful to consult with stakeholders, technical staff or users. You should consider all aspects of your contract, including the management of your contract, and assess whether there may be exposure to any risks. Some common sources of risk and examples of risks are listed in the table below (this is not a definitive list and you will need to consider risk in the context of your contract).

Sources of Risk	Examples of Risks
Systems, procedures and guidance	• Multiple systems that are not integrated and/or require multiple entry of the same data • Systems that are not supported by appropriate procedures and/or guidance material • Different systems containing incomplete and/or conflicting contract data • Absence of required contract delegations
Roles and responsibilities	• Unclear and/or misunderstood roles and responsibilities for aspects of contract management
Contract management capability	• Lack of understanding of relevant government and/or entity procurement policies and reporting requirements relating to contracts • Lack of experience in the management of contracts • Lack of recognition of the importance of contract management • Insufficiently skilled and experienced resources available to effectively manage the contract • Lack of training in contract management • Failure to act on supplier under-performance • Fraud and/or unethical conduct by staff
Supplier performance	• Supply chain issues • Failure to provide contract deliverables on time, to the agreed quality standards • Failure to adhere to the agreed budget • Failure to comply with all contract provisions, for example, privacy, security, recordkeeping • Fraud and/or unethical conduct by the supplier
Changes in circumstances or requirements	• Contract changes not dealt with as contract variations • Supplier not prepared to agree to contract variations to accommodate changes in entity requirements • Changes in circumstances not managed in a timely manner
Stakeholder relationships	• Stakeholders not consulted and/or kept informed about contract performance • Changes in stakeholder needs and/or expectations not communicated to contract manager • Differing and/or conflicting stakeholder expectations
Contract materials information and records	• Failure to provide required materials or information to the supplier • Failure of the supplier to return or destroy all materials, information and records in the agreed timeframe and through the agreed processing (ensuring compliance with the Protective Security Policy Framework (PSPF))
Payment	• Failure to pay supplier invoices in a timely manner • Failure of the supplier to provide correctly rendered invoices • Submission by the supplier of an invoice for unforeseen or unapproved additional costs

Sources of Risk	Examples of Risks
Transition arrangements	• Failure to appropriately manage transition from the outgoing supplier • Not commencing arrangements for a new procurement in a timely way • Service disruption • Probity issues with procurement process for replacement goods or services after the contract end date, particularly where existing supplier is re-tendering • Not addressing performance problems with an outgoing supplier • Not addressing performance problems with an existing supplier
Achieving Value for Money	• Not addressing performance problems with a supplier • Contract variations degrading value for money • Not gathering data to allow determination of whether value for money was achieved • Not reviewing contracts and learning lessons from improvement opportunities • Not linking value for money achieved in a contract with the contract renewal process
ICT Risks	• Failure to have appropriate security controls and measures in place to protect Commonwealth data and the personal information of Commonwealth officials • Failure to protect the privacy of Commonwealth officials and any personal data that the supplier may come across or have in their possession • Failure to have supplier personnel appropriately security assessed to ensure the protection of Commonwealth data

0.2 Develop a contract management plan

A contract management plan contains key information about how the contract will be managed over its life to ensure that value for money is achieved. It should be a working document that assists you to manage the contract. Your contract management plan should reflect the level of complexity and risk associated with your contract. Transactional and routine contracts may not need a written contract management plan. More complex or higher risk contracts would usually require a detailed contract management plan.

Your contract management plan should detail commonly referenced information about the contract. It should not replicate contract information but should provide references to that information (eg relevant contract clauses, location of registers or plans). This is to ensure that, should information change in the contract or other documents, it is not contradicted by the contract management plan. You should use your entity's contract management plan template if available.

A contract management plan may contain:	
a.	**Key activities:** A summary of key activities to be completed (including milestones/dates, contract expiry, notice periods, extension options, contract review timings and processes etc) and who is responsible for each activity.
b.	**Roles and responsibilities:** A list of the main individuals involved in the contract, their positions, contact details and their responsibilities (for both the procuring entity and the supplier).
c.	**Risk management:** Details of risks that have been identified and how and by whom they will be managed (for more complex contracts this may be a separate risk management plan).
d.	**Contract governance:** Details of stakeholder engagement, contract oversight, process for the escalation of issues or disputes, internal reporting including content, frequency, and distribution of any reporting within the procuring entity, for example, monthly reporting to the senior management team.
e.	**Supplier reporting:** The frequency and content of the supplier's reporting and timeframes for acceptance of reports including details of the reporting from subcontractors.

f.	**Meetings:** A schedule of meetings and any standing agenda items, the process for the production and agreement of minutes and turnaround times.
g.	**Performance management:** Details of how performance will be managed, including the reporting of Key Performance Indicators (KPIs) or Service Level Agreements (SLAs), how data will be gathered, verified and calculated, details of remedies or withholds etc.
h.	**Delivery and acceptance:** Details of the acceptance process or specifics around the delivery of goods or services including standards to be met and audit requirements around those standards, compliance certificates etc.
i.	**Payments arrangements:** Details of pricing including payment terms, milestones payments etc.
j.	**Specified personnel:** Details of any specified personnel including position, supervisor, security clearances etc.
k.	**Supplier access and security:** Detailing requirements for: • access to facilities or information systems • access and storage of assets • access, recording or storage of information or data, including personal information (as defined in the Privacy Act 1988 (Cth)) • security requirements, either personnel or cyber.
l.	**Insurance and guarantees:** Details of any insurance certificates, bank guarantees, indemnities or Statements of Tax Record provided by the supplier, any expiry or renewal dates and storage location details.
m.	**Contract variations:** Details of the process as defined in the contract for requesting variations to the contract and details of delegates.
n.	**Extension options or contract renewal:** Details of options and information about review of the contract and the process for extending the contract as well as the lead-time needed for any re-tender or contract renewal.

0.3 Develop a risk management plan

A risk management plan provides a systematic approach to identifying, assessing, evaluating and treating risks that are associated with your contract. You will have assessed these risks in the first step at section 0.1 (page 19).

A risk management plan specifies the approach, the activities and resources to be applied to managing the risks and will typically include:

- a summary description of the risks
- an assessment of the controls that are already in place to manage each risk
- an assessment of the likelihood of each risk occurring and the consequence if the risk occurs
- an evaluation of the overall level of risk, which can then be compared with entity guidelines to determine whether the risk is acceptable, and whether the risk needs further treatment
- a description of any risk treatments that will be applied, including a sequence of activities
- process for reporting and escalation
- assignment of responsibilities
- timeframes for activities and reviews.

While transactional and routine contracts may not require a formal written risk management plan, you should still consider and document any risks.

Complete risk management plans in accordance with your entity's risk management framework using any entity specific templates.

Key steps in this activity include:	
a.	Identify risks (see step 0.1 Assess risk page 19).
b.	Analyse risks (likelihood and consequence) to determine the severity of each risk (extreme, high, medium, low).
c.	Evaluate risks including: • identification of current controls and their effectiveness • if any additional controls or treatments are required • assess the tolerability of each risk to determine which risks need treatment and the relative
d.	Planning and documenting risk controls, treatments and mitigation strategies and assigning responsibilities.
e.	Documenting the timeframe or circumstances when you will need to do a risk review (eg bi-annually or before issuing any contract variation) and any process for reporting and escalation.

0.4 Develop other plans if required

Most contract risks and issues can be documented in your contract management plan or your risk management plan. Where significant risks are identified, consider preparing, on a scaled basis, a plan to formally address these risks. These plans are often contract management tools that are either embedded or referenced in the contract (to make them contractually binding). If required, draft and agree necessary plans as early as practicable to guide contract management processes.

Other plans that you may consider developing:	
a.	**Transition plans:** If the contract is replacing an existing contract for similar goods or services, you may require a "transition in" plan at the commencement of the contract. Similarly, you may need a plan to "transition out" at the end of the contract. These plans detail transition tasks, timeframes, resources, communications, risks and management strategies.
b.	**Communications or stakeholder engagement plan:** This formally defines who should be given what information, when that information should be delivered and what communication channels will be used to deliver the information.
c.	**Probity plan:** A probity plan details the mechanisms for assuring probity within the management of the contract. Probity is the evidence of ethical behaviour, defined as demonstrated integrity, uprightness and honesty in the process.
d.	**Fraud control plan:** This details fraud risks within the procurement and measures to mitigate the risks.
e.	**Security plan:** Security risks can arise from the supplier accessing facilities or data or needing to integrate their products with entity systems etc. The supplier may have to meet very specific security policies and requirements. A security plan details mandatory security standards, procedures to be followed and required risk mitigation measures. It may also cover the protection of personal information and cyber security issues if applicable.
f.	**Supply chain risks plan (eg disruption of supply or modern slavery):** Aspects of your supplier's supply chain could be geographically, ethically or environmentally unsound particularly in certain industries. This may result in the contracted goods not being delivered or reputational damage to your entity. A supply chain risk management plan details procedures for monitoring your supplier's supply chain and addresses any issues.
g.	**Disposal plan:** An entity must dispose of goods in a manner that is lawful, efficient, economical, ethical and environmentally sustainable. If the goods received under your contract require specialised disposal treatment you may require a disposal plan. In some cases, the supplier may be contracted for the eventual disposal of the goods, but your entity will remain accountable for how the disposal occurs.

0.5 Consider and manage any contract transition issues

Sometimes your contract will be for the supply of similar goods or services to those supplied previously. The new contract may be with the same supplier or with a different supplier. Even with the same supplier, often the contract will be different, for example, you may have modified your requirements or the supplier may have developed an innovative way to fulfil your requirements.

Whenever you are managing a new contract for goods or services that have previously been supplied to your entity, you should identify what is required to transition effectively from one contract to another. If the transition arrangements are complex, you may need to develop a separate written transition plan considering the contractual obligations under both the old and the new contracts.

Some typical transition considerations are:	
a.	Confirm the transition in and transition out obligations in the contract.
b.	Obtain a transition in and transition out plan from the incoming and outgoing supplier and ensure each meets the obligations under the relevant contract and your entity's needs.
c.	Prepare a timeline of activities/events, including change over periods.
d.	Identify resource requirements.
e.	Identify key roles and responsibilities and how these change with the transition.
f.	Note specific differences between the previous contract and the new contract.
g.	Identify who needs to know what details about the new arrangement and what communication channels you will use.

h.	Consider training needs for staff if the requirements are new or significantly different, or if supply arrangements will change.
i.	Identify and manage risks such as: • maintaining a continuous supply of goods or services during the transition • managing and minimising the effects associated with the changes on users • managing the outgoing supplier's performance through to the conclusion of their contract.
j.	Retrieve any Australian Government assets, documents or information provided to the outgoing supplier and provide those, as required, to the new supplier.
k.	Identify any intellectual property rights within the old contract and assess the suitability or any risks for the transition to the new contract.
l.	Arrange access for the new supplier to facilities or systems, including security clearances, and terminate access for the old supplier.
m.	Identify additional transitional arrangements that may need negotiation with the incoming or outgoing supplier.
n.	After the transition and final deliverables are satisfactorily received, approve final payment to the outgoing supplier.

Tip – transition if there is a no change in supplier

Even when the new contract is being provided by the same supplier, there are likely to be differences between the previous contract and the new one. You need to ensure that everyone (you, the users and the supplier) are clear about any differences, including:

- changes in scope of the goods or services
- changes in the mode of delivery
- changes in timing of delivery
- changes to the contract terms and conditions

Think about who needs to know about the changes and keep them informed. In the early stages of the new contract, you should monitor contract performance closely to make sure that the supplier is not simply doing what they have always done but is delivering the goods and services under the terms and conditions of the new contract.

Consider, on a cost benefit basis, whether you need to develop a separate transition plan or transition checklist for your contract.

Tip – transition if there is a new supplier

When the new contract is being provided by a new supplier, the most important thing is to try to facilitate a smooth transition from the old to the new. Do your best to encourage a cooperative approach between the two suppliers but note that realistically, the two suppliers are likely to be commercial competitors.

You will need to carefully manage the outgoing supplier to make sure they meet their obligations and do not impede the incoming supplier from delivering the specified goods and services. Make sure you are clear on the transition obligations in both contracts so that they can be enforced.

0.6 Skills Development

Contract management requires a broad range of knowledge and skills. Assess if you and the people on the contract management team have the necessary skills and knowledge to manage the contract. If not, consider organising training to address any shortfalls, obviously the sooner the better, as there are lead times to build appropriate capability.

Phase 1

What activities should I do in the contract start-up phase?

If you have come directly to this phase and your contract has already commenced, go to **Phase 0 – planning for contract management** and scan the recommended activities and complete as required. The table below lists the activities for the contract start-up phase. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during contract start-up phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
1.1	**Review contract (page 20)**	Required	Required	Required	Required
1.2	**Confirm contract management roles and responsibilities (page 21)**	Recommended	Strongly Recommended	Required	Required
1.3	**Set up contract administration (page 21)**	Recommended	Strongly Recommended	Required	Required
1.4	**Set up contract information management (page 22)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
1.5	**Set up contract communication management (page 22)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
1.6	**Review and update plans (page 23)**	Not required	Recommended	Required	Required
1.7	**Provide the supplier with agreed access, assets, information and security (page 23)**	Required (If applicable)	Required (If applicable)	Required (If applicable)	Required (If applicable)
1.8	**Conduct contract start up meeting (page 24)**	Not required	Recommended	Strongly Recommended	Strongly Recommended

1.1 Review contract

Good contract management requires a complete set of the contract documentation and a clear understanding of each party's obligations under the contract. If you are managing a contract (work order) under a deed of standing offer (panel), make sure you have a copy of that deed to understand the obligation on that supplier. If you were not involved in the sourcing process talk to the sourcing team to understand any significant issues or risks relating to the contract and the procurement process, particularly details of any tender negotiations and rationale for any changes. They will also be able to detail the drivers for the assessment of value for money so you will understand what provisions you should keep an eye on during the contract performance phase.

Obtain a copy of the supplier's tender response to understand factors around what they have offered and any additional details on how the costs were broken down or inclusions that are factored into the price.

Key steps in this activity include:	
a.	Read the contract.
b.	Ensure you understand what is to be delivered under the contract and the outcomes to be achieved by the contract.
c.	Identify the drivers to achieve value for money.
d.	Identify all obligations in the contract for both parties.
e.	Identify the rights available to the entity to ensure compliance by the other party such as, delivery and acceptance requirements, reporting, performance criteria (eg Service Level Agreements (SLAs) or Key Performance Indicators (KPIs), process for dealing with unsatisfactory performance, process for issuing breach notices and process for the escalation of issues.
f.	Include relevant information in your contract management plan (see step 0.1).

1.2 Confirm contract management roles and responsibilities

It is important that you know who is responsible for key contract management activities and that you allocate appropriate resourcing to the contract.

Key steps in this activity include:	
a.	Review the contract to identify who the nominated Commonwealth and supplier representatives are under the contract and what responsibilities they have.
b.	Agree roles and responsibilities of contract management team.
c.	Document appropriate delegates and authorised officers consistent with the contract terms.
d.	Confirm the account manager, operations manager, authorised officer etc. for the supplier.
e.	Confirm specialist advisers (procurement, legal, technical, operational).
f.	Identify stakeholders and end-users. Who is going to accept/own the goods or services?
g.	Determine whether any training or other capability development is required for key people to be able to perform their contract management roles (this may have been done in Phase 0).
h.	Include relevant information in your contract management plan (see step 0.1).

1.3 Set up contract administration

Clear contract administrative procedures will help all parties understand who must do what, when it has to be done and how it has to be done. These procedures should be clearly set up at the beginning so that everyone starts with a shared understanding.

At the very least, there should be processes to:

a. verify that
   i. deliverables itemised in an invoice have been delivered and accepted by the entity and
   ii. the supplier has fulfilled the required obligations under the contract prior to making a payment

b. verify invoices are correct and in accordance with the contract

c. ensure payments of correctly rendered invoices are made to the supplier within the time frame stipulated in the contract and in line with the Government's payment policy

d. track expenditure to ensure it does not exceed the value of the contract

e. ensure that the appropriate delegate has approved the expenditure and you have this documentation.

In this phase, you may also set up the processes and procedures to:	
a.	Identify funding source and budget acquittal/accountability/reporting requirements.
b.	Identify the method or process to reconcile and pay invoices, including the level of detail to be provided in invoices (eg purchase order numbers, email address for contact officer, description of work etc.), and the format for electronic invoices.
c.	Set up record keeping systems (budget, funding, invoicing, performance, contract variations etc.).

d.	Identify and promulgate in advance a schedule of meetings for parties to the contract, end-users and stakeholders, giving the time, place and purpose of the meeting. This gives the best opportunity for the right people to attend contract management meetings.
e.	Identify and promulgate details of any ordering procedures to be followed by users wishing to obtain goods or services under the contract.
f.	Ensure any conflict of interest declarations or deeds of confidentiality from relevant personnel (entity and supplier) have been provided (see section 2.1 Behaving ethically). Include reminders of these obligations in agendas for contract management meetings if appropriate.
g.	Ensure all insurances, indemnities, guarantees and Statements of Tax Record required from the supplier have been received and recorded. Set reminders to ask for these documents if they need renewing.
h.	Ensure you have copies of any standards relevant to your contract.
i.	Include relevant information in your contract management plan (see step 0.1).

1.4 Set up contract information management

Proper systems for identifying, gathering and recording relevant information will help you to manage your contract effectively and provide a clear audit and accountability trail.

Key steps in this activity include:	
a.	File a signed copy of the contract in your financial management information system and/or your document management system.
b.	Decide how you will register and manage information about key contract activities, for example, meetings with supplier, correspondence with users and internal clients, complaints or variations.
c.	Create a contract register or other documents to track contract performance and keep records.
d.	Develop templates for relevant activities, for example, reporting templates, meeting agendas, standard communication emails etc.
e.	Ensure you retain all contract records for reconciliation and audit purposes.
f.	Include relevant information in your contract management plan (see step 0.1).

1.5 Set up contract communication management

Keep up-to-date details of:

- who to talk to about contract issues
- preferred channels for communication and when to use them (eg phone calls, emails, meetings, reports, formal letters)
- agreed response timeframes
- how to escalate unresolved issues.

This will help all involved communicate appropriately about contract issues. For more complex or strategic contracts you may want a separate communications plan.

Key steps in this activity include:	
a.	Identify channels for communication between all parties for different types of contract issues that may arise. Share with all concerned including the supplier where appropriate.
b.	Establish appropriate response timeframes for contract communications (eg emails might be acknowledged same day and responded to within 24 hours unless the issue is complex).
c.	Set up contract meeting and reporting schedules.
d.	Establish a correspondence log to ensure you don't miss key contractual dates and you appropriately action all issues.
e.	Include this information in the contract management plan (see step 0.1).

Tip - different types of contract meetings

- **Regular progress meetings** that involve the supplier, your contract management team and other key staff from the procuring entity if required. These meetings are to discuss performance, contract events or milestones, changes to user requirements, review risks and to consider proposed actions or responses to current or potential issues.
- **Technical meetings**, as required, that involve specialist technical representatives from the contract management team, the contract manager and the supplier, to review technical reports and performance data and discuss technical issues.
- **Longer-term reviews and audits** to evaluate the achievement of objectives, results against budget, user satisfaction, the extent to which value for money is being achieved and requirements are being met, and how to address any emerging issues.
- **Issue specific meetings** may be required if an issue emerges that, if not addressed promptly, will have significant impact on the management, performance or delivery of the contract.

1.6 Review and update plans

Ideally, you will have prepared your contract management plans prior to the contract being awarded. It is a good idea to review these plans at the start of the contract and update them if details have changed. If you haven't developed your plans before the contract has commenced, decide which plans you will need and develop them as soon as possible (see sections 0.1 to 0.3).

Plans for drafting or updating (as required):	
a.	Contract management plan
b.	Risk management plan
c.	Transition plan
d.	Communications plan
e.	Probity plan
f.	Security plan.

1.7 Provision of security, access, assets and information to supplier

For some contracts, you will need to organise access for the supplier to your facilities, assets, information or data and in some instances, specified personal may need to obtain security clearances. You may need to arrange access to buildings, information systems, physical documents or other assets.

You may need to organise the following:	
a.	Security clearances for supplier personnel. Your contract should identify which party is responsible for obtaining the security clearance, however in most cases, it will require your entity's sponsorship. Engage with your security area for instructions.
b.	Access to facilities (office buildings, warehouses etc.).
c.	Access to information systems, networks or data storage facilities.
d.	Access to your information or data in either physical or electronic form.
e.	Access to your assets.
f.	Ensure that you keep a list of all assets, information or data that you provide to the supplier as these will need to be returned or disposed of at the end of the contract. Record this information in your contract management plan.

1.8 Conduct a contract start up meeting

A contract start-up meeting is a good way to begin a contract as it allows you to establish a working relationship with your supplier and to develop a shared understanding of key aspects of the contract, including commercial, operational, performance and administrative expectations.

Where travel is an issue, remember contract management activities should be commensurate with the size and complexity of your contract, and holding meetings via video- or tele-conference may be better options.

A contract start up meeting typically covers:	
a.	Introduction of key people.
b.	Develop a shared understanding of the contract – commercial, operational and performance aspects.
c.	Agree roles and responsibilities of key people including assigning responsibility for risk management.
d.	Confirm contract timelines and milestones. Note that milestones should be detailed in your contract. Other key events may be identified between you and the supplier or the contract may require a procurement schedule to be produced by the supplier.
e.	Discuss transition issues and how to manage them.
f.	Agree how to manage the contract relationship including communication, regular meeting details, issues, disputes, variations and escalation. Refer to contract documentation for details on any of these processes where applicable.
g.	Clarify invoicing and payment arrangements in line with the contract terms (eg email address for delivery of invoices).
h.	Housekeeping tasks that have not been actioned earlier such as: • Ensuring insurance certificates, bank guarantees and Statements of Tax Record are delivered • Ensuring deed of confidentialities and conflict of interest forms are signed and delivered • Clarifying processes for security clearances • Detailing requirements for access to facilities, assets, information or data.

Phase 2

What activities should I do in the contract performance phase?

The table below lists activities that may be relevant during contract performance. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during the contract performance phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
2.1	**Behaving ethically (page 26)**	Required	Required	Required	Required
2.2	**Using advisers (page 28)**	Recommended	Strongly Recommended	Strongly Recommended	Strongly Recommended
2.3	**Unintentional variation or waiver through conduct (page 28)**	Strongly Recommended	Strongly Recommended	Strongly Recommended	Strongly Recommended
2.4	**Building and maintaining effective professional working relationship with your supplier (page 28)**	Recommended	Strongly Recommended	Strongly Recommended	Strongly Recommended
2.5	**Measuring and managing performance (page 29)**	Recommended	Required	Required	Required
2.6	**Managing delivery and acceptance (page 32)**	Required	Required	Required	Required
2.7	**Subcontractors (page 33)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
2.8	**Performing contract administration tasks (page 33)**	Required	Required	Required	Required
2.9	**Managing contract risk (page 36)**	Required	Required	Required	Required
2.10	**Contract review (page 36)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
2.11	**Managing complaints, disagreements and disputes (page 36)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
2.12	**Managing contract variations (page 39)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)
2.13	**Managing contract extensions or renewal (page 40)**	Required (if applicable)	Required (if applicable)	Required (if applicable)	Required (if applicable)

2.1 Behaving ethically

If you are employed under the Australian Public Service Act or other enabling legislation you have a responsibility to behave ethically. This extends to procurement activities including contract management.

Contracted staff involved in contract management will usually have clauses built into their employment contract ensuring they comply with Commonwealth laws and policies, declare conflicts of interest and not act fraudulently. The contracted staff member may be in breach of their contract if they do no uphold these obligations.

Ethical behaviour:

- ensures transparency and accountability in a procurement process
- gives suppliers confidence in their dealings with the government
- can reduce the cost of managing risks associated with fraud, theft, corruption and other improper behaviour
- supports confidence in public administration.

Ethical considerations to keep in mind when undertaking contract management might include:

- the need to uphold the APS Values and Code of Conduct
- the need to achieve the contract outcomes
- the need to maintain a positive working relationship with the supplier
- whether an actual or potential conflict of interest exists
- whether you need to put in place reasonable and cost-effective mitigation arrangements to address actual or potential conflicts of interest.

As a contract manager, you should ensure all individuals materially involved with the management of a contract make a conflict of interest declaration and update it on a regular basis, particularly for longer term contracts. Ensure you get an update to the conflict of interest declaration if their circumstances change or as required by your Entity's Accountable Authority Instructions or other obligations.

There may be clauses in your contract that require supplier personnel to identify, disclose and appropriately manage any conflicts of interest.

Types o Conflict o Interest

A conflict of interest occurs where there is a direct conflict between the current official duties of an employee and their existing private interests.

A **real** conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.

An **apparent** conflict of interest occurs where it appears or could be perceived that private interests are improperly influencing the performance of official duties, but this is not in fact the case.

A **potential** conflict of interest occurs when there is potential for the private interests of an employee to influence the performance of their official duties in the future, although there is no current conflict.

Some definitions from: The Australian Public Service Commission website – conflicts of interest
https://www.apsc.gov.au/conflicts-interest

Conflict of Interest

A conflict of interest exists when it appears likely that an employee could be influenced, or where it could be perceived that they are influenced, by a personal interest in carrying out their official duties.

Common conflicts of interest

Some of the most common conflicts of interest that can arise during contract management are:

- **Accepting an offer of gifts, hospitality or other benefits:** If your supplier offers to take you out for a meal, offers you a bottle of wine or a corporate gift or invites you to attend a sporting event as their guest, this may be a conflict of interest. Your entity will have a policy about acceptance of gifts, hospitality and benefits and you must be sure to comply with this policy. Generally, you should avoid accepting gifts, hospitality or other benefits from a supplier whose contract you manage, have managed in the recent past or will be managing in the immediate future. If you are uncertain about accepting a gift, hospitality or other benefit, you should check with your manager.
- **Accepting an offer of employment:** If you are offered or accept employment from the supplier whilst you are managing their contract you should let you manager know, even if you don't intend to accept the offer.
- **Relationship with the supplier:** you may have a conflict of interest if you, a member of your family or a close friend is employed by or has a substantial interest in the supplier. This could include:
  - a financial interest in the company such as shares, dividends, investments, loans or other payments or debts
  - through direct employment, being a director, sitting on a board, or being a sub-contractor
  - through a friendship

If this occurs, you should notify your manager.

- **Relationship with a direct competitor within the same industry:** If you, a family member or close friend has a financial relationship, friendship or is employed by a direct competitor in the same industry it may appear to others that you are biased against the supplier. If this occurs, you should notify your manager.

Implications of conflicts of interests

If a conflict of interest occurs, it may:

- pre-dispose you to act favourably towards a supplier, including overlooking supplier underperformance, or reacting more favourably to requests for contract variations
- make it difficult for you to manage underperformance with a supplier
- be seen by other potential suppliers as a sign of an inappropriately close relationship
- be seen to undermine the integrity, fairness and impartiality of the contract management process.

Conflicts of interest are common and do not imply misconduct. However, if you don't declare a conflict of interest or don't manage it appropriately, it may be viewed as wrongdoing.

Want to know more about behaving ethically?

You can read more about the APS Values, Code of Conduct and conflict of interest:

- on the APSC web site http://www.apsc.gov.au/conflicts-of-interest
- by downloading the document APS Values and Code of Conduct in Practice at http://www.apsc.gov.au/aps-values-and-code-conduct-practice
- by downloading the Department of Finance Resource Management Guide - 203: General duties of officials at http://www.finance.gov.au/resource-management/accountability/officials/.

2.2 Using advisers

As a contract manager, you may have access to specialist advisers within your entity who can help you with contract management activities. It is better to seek advice from a specialist early to avoid making mistakes.

Commonly used advisers for contract management may include:	
a.	**Procurement specialists** can assist you with questions about the procurement process (including contract management). They can provide advice about the processes you need to follow for contract variations, supplier performance management, contract closure or contract renewal. They can also give you advice around any probity issues that may arise.
b.	**Technical and operational advisers** can help you to better understand issues around the subject matter of your contract. For example, these advisers may be able to help you determine whether goods or services provided by the supplier have met the required contractual standard. They can also be helpful in generating possible solutions to complaints and disputes, as well as provide advice in situations relating to the supplier's performance.
c.	**Legal advisers** can help you deal with legal issues associated with your contract. For example, you should seek legal assistance if a situation looks like escalating into a formal dispute, if you are thinking about terminating your contract or if you need help in understanding the meaning of a clause in your contract. They can also give you advice around any probity issues that may arise.

These advisers may be internal resources available to you or your entity may have existing arrangements in place with other Commonwealth entities or external providers.

It is important to document the advice even if you decide not to act on that advice.

2.3 Unintentional variation or waiver through conduct

Ensure that you carry out all contractual obligations, as there is a risk that failing to do so could have negative implications going forward, for example:

- Not following an acceptance process upon delivery of goods could result in goods being deemed to have been accepted.
- Not addressing supplier underperformance when reported may establish new reduced performance levels within the contract.

When talking with your supplier, in some circumstances, this communication can result in a variation of the contract or a waiving of your entity's rights under the contract. So, when discussing what you expect from your supplier, ensure your comments are in line with the contract.

If discussing a possible contract variation with a supplier, be careful not to imply agreement until all aspects have been finalised, including any internal approvals from relevant delegates. Keep note of discussions or agreements and email these to the supplier to avoid uncertainty regarding the discussion, minimise the risk of dispute and ensure you both have a record.

If your entity chooses not to enforce obligations in the contract, ensure you clearly document this decision internally and with your supplier.

If both parties agree to a variation of the terms of the contract, this should be clearly documented in writing, in accordance with the particular requirements of the contract (see section 2.12 - Manage contract variations within this guide).

If you are at all unsure about anything relating to variations or waivers please contact your legal advisers or central procurement area.

2.4 Building and maintaining effective professional working relationship with your supplier.

An effective professional working relationship with your supplier is the cornerstone of contract management. If you have a professional and fair relationship with your supplier and maintain open communication:

- you are more likely to achieve the contract outcomes
- you can identify and resolve problems before they escalate
- you can discuss and resolve issues of non-compliance or under-performance in a constructive way.

An effective working relationship is characterised by:	
a.	Mutual trust and understanding.
b.	Open, clear and honest communication.
c.	Parties that appreciate one another's objectives, strategy and point of view.
d.	A collaborative approach to achieving contract delivery.

You can establish an effective professional working relationship with your supplier by:

- establishing shared understanding of the contract (a contract start up meeting/workshop is helpful here)
- having clear contract management processes and applying these consistently
- ensuring that key people have good skills and relevant experience to develop and maintain a professional relationship with your supplier
- having clear performance standards, review processes and undergoing corrective actions consistently and promptly when needed.

You might need to strengthen your relationship with your supplier if you experience issues such as:

- poor response times to requests
- lack of a shared understanding about key contract issues
- limited willingness to respond to requests for information or updates on progress
- general dissatisfaction about the helpfulness of the other party.

Avoid adversarial behaviour, as this is not constructive and could damage your relationship.

Relationship management for complex/strategic contracts

For more complex or strategic contracts, particularly long-term contracts, you may wish to:

- establish a behaviours charter or relationship management plan to help improve contract outcomes
- consider using Supplier Relationship Metrics to promote open and effective engagement with the Commonwealth.

You can do this formally through the contract (where the contract allows) or less formally as part of the contract management plan or as a standalone document. Make sure you get advice from your central procurement area or legal adviser when preparing these documents.

2.5 Measuring and managing performance.

Performance management involves the actions you take to ensure the goods or services are delivered as required under the contract. Good performance management is key to delivering value for money. Performance management should take place throughout the life of the contract and be based on the performance framework included in the contract.

Performance standards should be specified in your contract, so you will need to check your contract to understand the performance parameters.

Generally, if there are no specific performance requirements in your contract:

- goods should be new and unused, fit for purpose and inclusive of manufacturers warranties
- services should be provided at a standard expected of an experienced professional supplier of similar services.

Performance management involves:	
a.	**Performance measurement:** collecting accurate and timely data on the supplier's performance.
b.	**Performance assessment:** deciding whether the supplier's performance meets the standards contained in the contract.
c.	**Performance adjustment:** taking appropriate action such as understanding features of good performance, correcting areas of underperformance, or amending the contract requirements to meet changing needs.

You will not usually need to include complicated performance management activities in transactional or routine contracts. You only need to make it easy to determine whether the goods or services met specification, were delivered on time and within the agreed budget. You may need to include formal performance management approaches in more complex contracts.

Typical performance measures for a contract include:	
a.	**Quality:** the quality of the goods or services delivered compared with the specified quality in the contract. For international or Australian standards, this may also require periodic auditing of compliance by an independent assessor (CPRs paragraph 7.26).
b.	**Quantity:** the number of items or volume of services delivered compared with the contracted number or volume.
c.	**Cost:** the actual costs compared to the cost specified in the contract.
d.	**Responsiveness:** the time taken by the supplier to respond to requests, compared with the contracted timeframes (eg in a service level agreement).
e.	**Customer satisfaction:** the degree of satisfaction expressed by people receiving goods or services under the contract compared with the expected level of satisfaction (eg in a service level agreement).

You may collect information about the supplier's performance to identify any gaps between their performance and the performance standards defined in the contract. These measurable indicators may be called key performance indicators (KPIs) or service level agreements (SLAs).

You should ensure any information you use to assess the supplier's performance is accurate, fair and verifiable, particularly if this is used to justify actions available under the contract (such as withholding contract payments). If the supplier is underperforming, the contract manager should engage with the supplier as soon as possible to correct the underperformance.

Managing supplier performance

Most contracts are completed without problems, but as a contract manager, you need to be prepared to address supplier performance issues as they arise. Many contract management problems can be avoided by developing an effective working relationship with the supplier.

Both parties should agree:

- what aspects of performance will be measured
- how they will be measured
- how frequently they will be measured
- who will do the measurement?

This information may be included in your contract.

The data that you collect about the supplier's performance can be used to identify any gap between the supplier's performance and the standards expected and defined in the contract. You need to be confident that the information you use to assess the supplier's performance is accurate, fair and complete.

If performance measurement indicates that there is a gap between the supplier's performance and the expected standard, you must work with the supplier to bridge that gap. This helps to ensure that the Australian Government is getting what it expects and what it is paying for (therefore achieving value for money).

Supplier underperformance can be minimised by having a performance measurement approach that allows prompt and ongoing feedback to the supplier about their performance, particularly regarding timeframes or deliverables. As contract manager, you need to be aware of any signs of potential underperformance so you can address them before they become serious. Prompt action can help prevent the problem worsening. It also lets the supplier know of any potential performance problems early and may make it easier for them to address the issues at low cost and with minimal disruption.

Performance management arrangements contained in your contract might involve:

- discussions to hear the supplier's perspective on the performance gap
- agreeing on corrective actions to get performance back on track
- establishing a process for checking the required improvements are taking place.

Corrective actions could include the supplier replacing or using additional personnel, reporting back more frequently on progress, modifying processes or systems or clarifying the procuring entity's requirements.

Usually responding to issues will not involve a contract variation as the supplier is only providing what they originally agreed to provide for the price already set out in the contract.

Managing more serious underperformance

If the underperformance is repeated or is more serious in nature, you may need to take formal action. Your contract will include provisions dealing with default and remediation, as well as termination.

Corrective action for serious underperformance could include:

- withholding payments until performance returns to a satisfactory level
- involving senior management from both parties in formal discussions
- developing strategies to address the problem, formally documenting them and following up
- implementing other formal mechanisms written into the contract.

You should get legal advice before taking any of these actions.

To protect the Australian Government's interests, payment for goods and services should always be linked in the contract with satisfactory performance. You should not accept, and therefore should not pay, for goods and services that do not meet the contractual standard.

Tip – managing supplier underperformance

Sometimes a supplier's apparent under performance can be caused by the procuring entity (eg if supplier does not get required inputs at agreed times, if supplier's employees cannot access the building, if there are changes to the procuring entity's requirements, if users are asking for services that are not included in the contract).

It is always sensible to approach a performance gap with an open mind – it could be a problem for the supplier to fix, but it may also be a problem for you to fix internally.

2.6 Managing delivery and acceptance.

The role of a contract manager is to ensure the supplier is meeting its obligations under the contract – including that the goods or services purchased under the contract are received on time, within budget and are fully compliant with contract specifications.

If the goods or services do not meet the standard required in the contract, you should notify the supplier immediately and agree on a way forward to ensure they meet the contract standard. The contract may include provisions around acceptance of deliverables and the process for remediation of non-compliant deliverables, so ensure you understand and follow any contractual obligations and processes.

If you fail to address the non-performance with the supplier, it could inadvertently cause a waiver of that conduct/ breach (see section 2.3 Unintentional variation or waiver through conduct).

Delivery and acceptance

Delivery refers to physically receiving the contracted goods or services from the supplier.

Acceptance is the term used to describe how the procuring entity determines whether the goods or services meet the contract requirements, and formally accepts them. Generally, the contract will set out the process for acceptance.

General process for acceptance

1. **Check appropriate risk management measures are in place**, for example, physical security and storage of goods and whether any insurance arrangements need to be put in place.
2. **Ensure the supplier has access to any facilities** needed to deliver the goods or services.
3. The supplier should **provide the contract deliverables on time, within budget and compliant with contract specifications.** This may include providing formal documentation and supporting evidence (eg results of internal acceptance testing showing the goods or services meet the contracted requirements).
4. **Inspect goods or services** or review against the standards or specifications detailed in the contract – your contract will include what you need to do for acceptance (eg certification that deliverables meet a certain standard, acceptance testing, spot audits or verification by an independent assessor (see CPRs paragraph 7.26). For services, you may need to assess against contractual performance measures such as service levels and compliance with reporting requirements. If you are receiving your goods or services by staged delivery, ensure the full quantity is ultimately delivered.
5. **Decide whether to accept or reject the goods or services** within contractual timeframes. In some contracts, if you do nothing then the goods or services will be deemed as accepted after a certain period.
6. **If goods or services do not meet contractual standards, follow processes set out in your contract.** In most cases, this involves notifying the supplier and explaining the reasons for the rejection. The supplier must then remediate the goods or services, generally, at their own expense. It is easier to ensure goods or services are not faulty and meet contract specifications at the delivery stage, rather than later in the process.

Late, incomplete or unsatisfactory delivery

If you receive goods or services that do not meet the contract standard, you should follow the procedures set out in the contract to resolve the issue.

You may need to seek legal advice to understand the Australian Government's rights under the contract. Avoid doing or saying anything that might have a negative impact on the Australian Government's rights (eg do not pay invoices for incomplete, undelivered or unsatisfactory goods or services) until you have sought legal advice.

2.7 Subcontractors

Most contracts require suppliers to impose the contractual requirements agreed between the Commonwealth and the supplier on any subcontractors they use to deliver a contract.

If your supplier uses subcontractors, the contractual relationship remains between your entity and the supplier. This means the supplier remains responsible for managing the contract, as well as managing the involvement of any subcontractors. However, you should understand what parts of the contract are completed by subcontractors and what impacts it could have on the management and delivery of your contract.

The Commonwealth Procurement Rules (CPRs) paragraph 7.21 require that you must be able to make available, on request, the names of any subcontractor(s) who perform part of your contract. Suppliers should inform relevant subcontractors that their participation in a contract may be publicly disclosed. This should be a provision within your contract.

When deciding on whether to approve a subcontractor for use, think about the effect it will have on the contract, including whether it raises any risks and whether the risks identified are acceptable to manage.

2.8 Performing contract administration tasks

This phase involves implementing the contract administration processes you developed in Phase 1 – Contract Start Up. Effective contract administration provides accurate recording of contract information and progress and can help when making decisions around contract performance.

Some of the key actions to consider include:	
a.	**Keep up-to-date records** of who to contact. This is important where there is staff turnover (either in your entity or at the supplier's) or when individuals are in different locations. You should ensure all contact details are in your contract management plan.
b.	**Manage and update contract documents**, including variations or work orders, etc. This ensures contract documents are easily accessible and accurately reflect any agreed changes at a point in time. This also provides an audit trail (see section 2.12 Managing contract variations).
c.	**Check on the currency of insurances, guarantees, indemnities and Statements of Tax Record** (if any) as required by the contract. This is part of contract risk management.
d.	**Maintain the contract management plan.**
e.	**Maintain other contract plans and schedules.**
f.	**Manage relevant correspondence** relating to the contract, including contract reports, and formal notices or letters to suppliers, etc.
g.	**Schedule meetings and performance reviews.**
h.	**Maintain and circulate meeting minutes, file notes and other records** to relevant stakeholders.
i.	**Ensure all parties follow correct delivery and acceptance processes.**
j.	**Provide financial control for the contract,** including tracking expenditure (usually via a budget or spreadsheet), verifying invoices for payment and making timely payments to the supplier, etc.
k.	**Maintain processes for identifying and tracking information regarding intellectual property and confidential information.**
l.	**Actively manage risks.** This may be through a risk management plan. **Maintain and update the risk register and risk management plan.** Escalate issues if required.

Some of the key actions to consider include:	
m.	**Process and manage contract variations.** **Warning:** It is possible to unintentionally vary the contract through conduct (eg in an email or through a conversation) so be aware of this risk in all your communications with a supplier (See section 2.3 Unintentional variations and waivers through conduct, and section 2.12 Managing contract variations).
n.	**Monitor the contract end date and options for extension.** Take timely actions to ensure there is a continuous supply of goods or services required by your entity. Careful management of end dates is important (see section 2.13 Managing contract extensions or renewal). There may be termination or extension option requirements in your contract that you must follow. **Warning:** You cannot extend an expired contract, as legally the contract no longer exists. This means that once you have passed the end date of the contract, you cannot extend the existing contract and will need to establish a new one.

Verifying invoices

When verifying an invoice, you should check:

- The description of goods or services on the invoice matches the description in the contract and the quantity matches a delivery receipt or an acceptance certificate and does not exceed the contracted amount.
- The invoice has been correctly calculated (eg per unit cost X number of units).
- GST has been correctly included.
- The invoice date is after the goods or services were received (unless in a case where payment in advance has been agreed).
- There are no other obvious errors and the invoice meets any other contract requirements.

In some circumstances, other payment methods may be included in the contract (eg milestones, progress or start up payments). If so, you will need to verify invoices according to these terms, which may include things like evidence of milestone achievement and payment amounts.

To mitigate the risk of fraud, it is good practise to have at least two separate people independently verify parts of the invoice payment process. This could include the user verifying if the correct goods or services were received, the contract manager verifying compliance to contract terms, a financial manager approving the payment and another person entering the information into the financial management system. This process should be proportionate to the size and complexity of your contract.

Making payments

You should only make a contract payment according to the contract provisions.

Generally, you should only pay an invoice when:

- you have received the goods or services and they meet the required standards
- the supplier is compliant with the contract and other contract payment terms
- you have received an accurate and correct invoice according to the contract
- you have obtained all necessary authorisations and approvals.

Your contract may require a formal acceptance certificate if the contract has a formal acceptance process. Your entity may also have additional requirements under its Accountable Authority Instructions. Check with your CFO area.

It is important to make payments on time. Timeframes are set out in your contract and should be in accordance with Resource Management Guide No. 417 - Supplier Pay On-Time or Pay Interest Policy. Delayed payments can incur interest and undermine your relationship with the supplier

Managing resources

Your entity needs to adequately resource the management of its contracts. This means providing you with senior management support, necessary expert advice and personnel with relevant skills (or the opportunity to obtain them). These skills include contract management, and may include interpersonal, subject matter and project management skills.

Want to know more about managing resources?

The Department of Finance has issued a range of Resource Management Guides that provide you with helpful information http://www.finance.gov.au/resource-management/index/rmg/.

Keeping records

You must keep all relevant documents to comply with the Archives Act 1983 (Cth). Relevant documents include documents that record decisions and/or approvals (including documents with signatures, the signed contract and any contract variations).

You should file documents consistent with your entity's records management practices.

A systematic approach to record keeping at the beginning of a contract will assist your entity to:

- provide evidence of business conducted and decisions made
- respond to Freedom of Information requests
- manage legal and other risks
- meet its accountability obligations.

As such, keeping good records should be seen as an integral part of, rather than incidental to, contract management activities.

Want to know more about keeping records?

Resource Management Guide 209 - Guidance for Commonwealth entities on the requirements to keep non-financial records can be downloaded from
http://www.finance.gov.au/resource-management/index/rmg/

PGPA Act Section 41 - a Commonwealth entity must cause accounts and records to be kept that properly record and explain the entity's transactions and financial position.
https://www.finance.gov.au/resource-management/pgpa-act/41/

2.9 Managing contract risk

Managing risk is an essential part of procurement and contract management. As the contract manager, it is your job to deal promptly and effectively with any risk events that may occur during the life of your contract, but all officials with a role in managing the contract also play a part in managing risk and identifying emerging issues.

You need to include identified risks in your contract management plan, or if the risks are substantial, into a separate risk management plan (see sections 0.1 to 0.3). You will need to review and update the plan to reflect the current stage of the contract and continue to update it periodically throughout the contract performance phase.

Your approach to managing risks for individual contracts should be consistent with your entity's broader risk management framework.

2.10 Contract review

To achieve value for money, you should ensure both the entity and the supplier meet their obligations under the contract.

During the life of the contract, you should review the contract periodically to assess if you are meeting the contract outcomes or they are on track to be met. You should also assess whether the contract continues to accurately reflect your entity's requirements. This may be through regular contract review meetings or through a reporting schedule. The timing and frequency of contract reviews is driven by factors including contract risks and duration. For long term or high risk contracts, you might require monthly performance reviews, and for low risk contracts, you might need an annual review.

You should also do a formal review when deciding whether to extend a contract (see section 2.13 Managing contract extensions or renewal).

2.11 Managing complaints, disagreements and disputes

You can make a complaint if unhappy with the goods or services delivered by the supplier, or if the supplier doesn't provide the goods or services within agreed timeframes. You may receive these complaints through users, stakeholders or from your own observations.

Supplier complaints often relate to late payments or a perceived failure by the customer to meet its obligations.

If you or a supplier makes a complaint, ensure you:

- follow any processes set out in the contract regarding complaints handling
- keep records of all conversations with the supplier regarding the complaints
- keep records of all complaints and actions taken to resolve them.

Most complaints can be resolved by talking to everyone involved to understand their perspective and then jointly agreeing on corrective action, if appropriate.

Contractual disagreements can arise when the individuals involved cannot agree on issues such as, interpretation of contract provisions, the definition of deliverables, meeting performance standards and/or the effect of unexpected events.

A complaint or disagreement may become a formal dispute when those involved cannot resolve the issue without a formal resolution process.

Many contracts contain a formal dispute resolution process that **MUST** be followed.

The dispute resolution process may include details such as, periods of notice, methods of delivering notices, information about show cause notices or other communication issues. Ensure you read and understand the relevant clauses of your contract before dealing with any issue that arises. You may also want to get legal advice on rights and options before you take any formal action or make recommendations to relevant delegates. This will ensure that your actions protect the Commonwealth's legal rights.

If you recognise and address a potential or actual dispute early, it can reduce costs to both parties and will help to maintain a good working relationship. Formal dispute resolution processes (eg arbitration, litigation) are a last resort and should only be started after attempts to resolve the dispute by negotiation, escalation and mediation have failed to resolve the issues, subject to the processes required in the contract terms.

NOTE: If either party triggers the dispute resolution clauses, you should promptly obtain legal advice about the situation to protect the Commonwealth's interests.

Some of the key actions to consider include:	
a.	**Engaging the supplier in open, transparent, constructive conversation** about complaints or disagreements promptly.
b.	**Understanding the supplier's perspective.**
c.	**Agreeing on corrective actions** to bring the goods or services within the requirements of the contract.
d.	**Escalating issues if necessary** to achieve resolution.
e.	**Using formal dispute processes only if you are unable to resolve issues using less formal processes** (eg negotiation, escalation, mediation).
f.	**Ensuring you follow the dispute resolution clauses** of the contract to protect the Commonwealth's rights.
g.	**Engaging with legal advisers if you need advice** regarding escalation and management of disputes.

Tip – managing complaints

End users may approach you with complaints about the goods or services provided to them under the contract. As contract manager, it is your job to look into the complaint, and consider whether it is something that you need to raise with the supplier.

Be aware that sometimes a complaint, even though genuine, is not covered by the contract. For example, a member of staff may complain that the cleaners are not washing dirty dishes in the sink, when this is not included in the cleaning contract.

You need to manage complaints according to the terms and conditions of the contract. If you cannot resolve the complaint, or the complaint indicates a serious or systemic issue, you should escalate the matter to a higher authority.

Early attention to complaints that arise in the contract management phase can prevent formal disputes from occurring. If a dispute about your contract does arise, you must carefully follow the dispute resolution process contained in the contract.

What is negotiation?

In contract management, negotiation usually means talking calmly, openly, transparently and constructively with the other party about the issues raised to see whether it is possible to reach an understanding about how those issues can be resolved. You should aim for a fair and equitable outcome for all parties.

It is preferable to resolve contractual issues as early as possible. This can save time and helps to maintain the delivery of goods or services provided under the contract

You must keep proper records of all negotiations during the life of the contract, whether the negotiation was successful in resolving the issue or not. Proper records will allow you to determine if the same issue keeps arising, if the supplier is performing in accordance with the agreements they made with you and if your entity is honouring commitments made to the supplier.

Any agreement you reach with the supplier must be consistent with the terms and conditions of the contract, with any proposal to change these arrangements identified and managed as a contract variation. You should be careful not to negotiate away important aspects of the goods or services that the Australian Government is paying to receive under the contract. This would reduce value for money obtained in the procurement.

What is escalation?

If you cannot resolve issues directly with the supplier, you may consider escalating the negotiation through your entity's hierarchy so more senior people from your entity can negotiate with more senior people from the supplier.

What is mediation?

Mediation involves the use of a neutral third party (the mediator) to assist the parties to resolve their issues. The mediator does not impose a decision on the parties, but instead applies a structured process to help the parties resolve the dispute themselves.

Mediation can be faster, less formal and less costly than court proceedings or arbitration. Limitations of mediation may include difficulty enforcing the agreement if one of the parties decides they no longer wish to comply, and the risk that the parties cannot reach an agreement at all.

What is arbitration?

Arbitration is a formal dispute resolution process in which the parties refer their dispute to an independent third person (the arbitrator) for resolution. The aim of arbitration is usually to get a final and enforceable result without the costs, delays and formalities of litigation. Arbitration proceedings can be less complex than litigation and the arbitrator can be a person who is able to provide independent technical expertise relevant to the contract.

Arbitration can be costly, and it is possible that neither party will be satisfied with the outcome (which is often binding). Other limitations of arbitration can include difficulty agreeing on an arbitrator and finding an arbitrator with the right expertise for the case.

Get legal advice if you are considering arbitration.

What is litigation?

Litigation is the process of seeking compensation through the courts or other tribunal. A judge will hear the evidence presented by both parties and will reach a binding decision based on the facts of the situation and the application of relevant law.

Litigation is generally the most expensive way to resolve a dispute and can be time consuming, the proceedings are usually public, there are significant risks associated with the process and the parties may not be fully satisfied with the decision of the court. Litigation is generally only undertaken when other avenues of dispute resolution have not been successful or are not available.

If you are considering litigation, you **MUST** obtain legal advice. Refer to the Legal Services Directions 2017 issued by the Attorney-General for further information about your obligations in this process.

2.12 Managing contract variations

Making changes to an established contract is called a contract variation. Contract variations can be minor administrative changes such as a change of address or they can be substantial changes that affect the length, price or deliverables under the contract.

An entity should not seek or allow a contract variation where it would amount to a significant change to the contract or significantly vary the scope of the contract if it could reasonably be determined that:

a. other potential suppliers may have responded differently to the amended contract scope in the tendering process which may have produced a different value for money outcome or
b. the variation may compromise the original procurement's value for money assessment.

Entities may allow minor contract variations, where these do not negatively affect the achievement of value for money in the contract.

The need for a contract variation may arise due to:

- unexpected events (including delays in delivery)
- changes in technology
- changes in legislation or policy
- minor changes to your entity's requirements
- changes in key personnel
- changes in delivery method or location
- changes to milestone delivery dates
- fluctuation in demand for the goods or services
- other factors that affect contract delivery.

Before initiating or agreeing to any variation the Contract Manager should determine:	
a.	Whether the variation is needed.
b.	The effect of the proposed variations on delivery.
c.	What effect, if any, the proposed variations will have on contract price.
d.	The effect of the proposed variations on other terms and conditions of the contract.
e.	Whether the variation will transfer or create risk.
f.	The details of the variation and whether it may amount to unfair treatment of unsuccessful tenderers who are denied an opportunity to tender for the changed requirement.
g.	Whether the variation will affect the original value for money assessment.
h.	What consequential changes may be needed to implement the variation?
i.	Whether the variation has any follow on implications.

The variation process you should follow is usually covered in the contract.

Either the procuring entity or the supplier can request a contract variation, but it must be agreed by both parties to be legally binding. A variation can be implemented without being formalised in writing. So be aware of what you say during meetings and informal discussions to ensure you do not accidentally vary the contract (see the information in Section 2.3 Unintentional variation or waiver through conduct).

You need to document your decision-making process for a contract variation to ensure your position is defensible and the contract still presents value for money. You should discuss any proposed variation to a contract with the supplier, document the variation in writing and ensure both parties sign as evidence of agreement to the changes (usually through a Deed of Variation).

Before finalising a variation, find out what approvals or authorisations you need to get, as well as the appropriate delegate – particularly if the variation will result in a change to the overall value of the contract. Consult your Accountable Authority Instructions (AAI's) or your central procurement area to identify the amount that requires approval (the variation amount or the whole new contract amount). Even if the delegate only needs to approve the amount of the variation, it is good practice to detail the new amount of the whole contract (the original contract value plus any variations to date plus the current variation). You must also record any financial changes in your entity's Financial Management Information System (FMIS).

Once you complete the contract variation, inform stakeholders about changes to the contract so they have a clear understanding of what goods or services to expect under the varied contract.

Your entity must report contract variations on AusTender within 42 days of varying the contract if valued at or above the CPRs reporting threshold of $10,000. You do not need to report multiple variations that are individually below the reporting threshold even if the combined total is valued at or above the reporting threshold, although you may choose to do so to correct the contract value on AusTender.

For longer term or more complex contracts, you should keep a 'master version' of the contract that includes any contract variations in mark up. This is important, especially when there has been several variations. Maintaining a 'master version' means, you have a copy of the latest version of the contract, as well as a record of the evolution of the contract.

You may want to consider using the BuyRight tool (available at www.finance.gov.au/procurement) to guide you through the steps for a contract variation.

2.13 Managing contract extensions or renewal

You may choose to extend a contract for an additional period if there is a continuing need for the goods or services.

You can only extend a contract if **all the following conditions are met:**

1. the contract contains an (unused) option to extend
2. it is value for money to extend the contract and
3. the contract has not yet expired.

If you choose to extend a contract, you should follow the process for extension contained in the contract.

If you do not meet the conditions for contract extension, seek legal advice. You may have the option to:

- Put in place a short-term contract to cover the period until you complete a new procurement process and establish a new contract.
- Extend a contract by contract variation before the contract end date for a short period of time where:

  a. the procurement process for a replacement contract is still ongoing and continuity of the supply of goods or services is essential or

  b. the scope and the value of the contract remains largely the same. This can allow for finalisation of the contract when experiencing minor delays.

Your entity must report contract extensions on AusTender within 42 days of amending the contract if it is valued at or above the CPRs reporting threshold of $10,000.

Key steps in this process are:	
a.	Determining whether there is an ongoing need for the goods or services.
b.	Determining whether the existing contract has an option to extend. **Warning:** You cannot legally extend an expired contract. This means that once the end date of the contract has passed, you cannot exercise an extension option, even if one exists, or extend through a contract variation.
c.	Considering whether extending the existing contract would represent value for money, and if so, gain necessary approvals and follow the extension process contained in the contract.
d.	Initiating contract renewal in a timely manner. If the contract does not have an option to extend or all extension options have been used, but the goods or services are still required, seek legal advice. You may need to initiate a new procurement process that will need to follow your entity's policies and processes for procurement, including procurement thresholds and delegations, and must also comply with the Commonwealth Procurement Rules.
e.	Keeping appropriate records for all decisions made in relation to extending or renewing a contract.

Phase 3

What activities should I do in contract closure?

The table below lists activities that may be relevant during contract closure. Your categorisation of your contract based on the complexity and risk profile will determine which activities you should complete.

Activities during contract closure phase include:		Transactional Contract	Routine Contract	Complex Contract	Strategic Contract
3.1	**Consider and manage contract transition issues (page 42)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
3.2	**Complete contract closure activities (page 42)**	Required	Required	Required	Required
3.3	**Conduct final contract review (with supplier) (page 44)**	Not required	Recommended	Strongly Recommended	Strongly Recommended
3.4	**Consider lessons learnt (page 44)**	Recommended	Recommended	Strongly Recommended	Strongly Recommended

Most contracts close because they have been satisfactorily completed, where both parties have completed all their obligations under the contract and/or the end of the term of the contract has been reached. This is often called ‘expiration’.

Sometimes you will end a contract before it has been completed. This is called termination of a contract. Terminating a contract early can carry risks – including reputational, business, financial and legal risk. If you are thinking of terminating or ending a contract early, you should seek legal advice before discussing the possibility with the supplier or taking any actions.

How can contracts end?

Mutual agreement: A contract is the result of an agreement. The parties to a contract can terminate a contract at any time if they all agree on the termination, even if the contract has not been completed. You should keep a detailed record of the exact terms of the agreement to terminate and the rights and obligations of everyone involved. **You will need to get legal advice** in this situation.

Novation: This occurs when a party's rights under a contract are transferred to a third party. This means the original contract is terminated and a new one is put in place with the third party on the same terms. An example of novation might be where a supplier sells its business to a third party during the life of a contract and requests a novation of the contract to the new business owner. In this case, the original contract is transferred to the new business owner (this ends the original contract and creates a new one with the new business owner). **You will need to get legal advice** before novating a contract.

Termination by breach (default): In some circumstances, you may have a right to terminate the contract due to a breach of the contract by the supplier. You should never consider termination as the first or only option when a problem arises in a contract. Termination has consequences – not all of them favourable to the terminating party. **You will need to get legal advice** in this situation before considering terminating by breach.

Termination for convenience: Many Australian Government contracts include a right for the Australian Government to terminate the contract for convenience, after providing notice to the supplier. When this occurs, it is often balanced by provisions that provide compensation to the supplier for costs incurred or costs unavoidably committed at the date of termination. This is a complex area of law and the outcome depends on the circumstances of the case as well as the contract provisions. **You will need to get legal advice** in this situation before considering terminating a contract for convenience.

Tip – Ending a contract for any reason other than successful completion

You should seek legal advice before considering ending a contract through termination. The contract will likely include specific termination clauses, which will set out the circumstances when each party can terminate the contract, the process to be followed, and the result of the termination.

Where the termination is due to a default by the other party, many contracts require the parties to follow the dispute resolution and other procedures before exercising a right to terminate the contract.

Following those procedures is extremely important. If you do not follow them before exercising a right to terminate, it can result in the Australian Government being obliged to pay damages to the supplier.

3.1 Consider and manage contract transition issues

You may need to manage a contract transition if:

- you still need goods or services after the completion of one contract and
- you are moving to a new contract.

The new contract may be with the existing supplier, or a new supplier.

The transition from one contract to another can be a period of risk. Check your contract to see what has been included about transitioning out. If your contract requires a transition out plan or checklist, ensure it is in place prior to the transition. If the contract requires a transition plan, ensure it:

- meets the timeframes and requirements under the contract
- can manage your entity's risk associated with the transition.

A transition out plan needs to be arranged before the end date and should be done before your approach to market for the new contract.

Ensure you understand, record, manage and enforce the obligations of the transition plan on the outgoing supplier, as well as your own entity's obligations to the supplier.

Some typical transition issues are:	
a.	Developing a timeline of activities/events, including change over periods.
b.	Identifying resource requirements.
c.	Identifying key roles and responsibilities and how these change with the transition.
d.	Identifying specific differences between the current and future contracts.
e.	Considering training requirements.
f.	Identifying risks and applying risk management to maintain continuous supply of goods or services and managing effects on customers.
g.	Considering matters connected with return of your entity's fixed assets and/or information.
h.	Determining and dealing with any transitional arrangements that need to be negotiated with the incoming or outgoing supplier.
i.	Managing the outgoing supplier's performance through to the conclusion of their contract.

3.2 Complete contract closure activities

At the end of a contract, you should formally close the contract according to the terms and conditions in the contract.

Some of the relevant activities include:	
a.	Verifying all work has been completed and all deliverables have been received to an acceptable standard.
b.	Verifying all other contractual obligations have been fulfilled to an acceptable standard.
c.	Obtaining all final reports, documentation, certifications from the supplier.
d.	Confirming final invoices have been received.
e.	Arranging to cancel access passes, remove system access, etc.
f.	Arranging for the return of any materials or assets provided to the supplier.
g.	Arranging for the return, safe custody or destruction of any information or data, including confidential information that was provided to the supplier or created by the supplier under the contract.
h.	Arranging to transfer any intellectual property (IP) to the Commonwealth.
i.	Checking all defects have been identified and rectified.
j.	Finalising outstanding claims.
k.	Finalising outstanding disputes.
l.	Documenting information on warranties available under the contract (for users).
m.	Advising users the contract has finished and providing them with advice about future arrangements (see section 3.1 Consider and manage contract transition issues below).
n.	Advising other stakeholders the contract has finished and providing them with relevant reports or other information they need to finalise their involvement.

Some of the relevant activities include:	
o.	Providing feedback to the category manager or procurement team to include in future procurement processes.
p.	Retaining contract management documentation in accordance with the Archives Act 1983 (Cth) Freedom of Information (FOI) Act 1982 to enable any future audit or FOI requests, including the signed contract and any variations.
q.	Identifying and documenting contract provisions that may continue to operate after the completion of the contract, such as confidentiality obligations.
r.	Documenting and sharing any lessons learned.

Only after completing all of the above	
s.	**Pay final invoices, return or terminate any performance securities, refund retention moneys (if any) in accordance with the contracted timeframes and close purchase orders in the financial management system.**

3.3 Conduct final contract review (with supplier)

Conducting a final contract review allows you and the supplier to:

- ensure that all obligations have been fulfilled by both the supplier and the entity
- assess performance, outcomes and whether you have achieved value for money
- provide feedback
- review effectiveness of delivery of outputs
- review contract effectiveness.

You can use this information to develop lessons learnt.

The depth and detail of the contract review will vary depending on the complexity of the contract and whether you will need to procure similar goods or services in the future.

The final performance review could include consideration of:	
a.	Whether the contract achieved its objectives, considering timeliness, quality and cost.
b.	Analysis of the supplier's performance including recording any value-adds achieved.
c.	Analysis of the procuring entity's performance.
d.	Information about the satisfaction of users, including identifying any major complaints.
e.	Analysis of effectiveness of contract variations, and why they were required.
f.	Information about disputes that arose during the contract, and supplier willingness to resolve issues.
g.	Review of budgeted versus actual costs, and reasons for the difference.
h.	Analysis of whether value for money was achieved, including a comparison against the original value for money assessment.
i.	Identified issues in planning, management, administration and processes, including how each was addressed and the effectiveness of each treatment.
j.	Discussion of other things that went well, or opportunities for improvement in future contracts.

3.4 Consider lessons learnt

Gathering lessons learnt, during a contract and when closing a contract, can help you to:

- apply learnings and improve contract management processes
- improve future procurement activities.

About standing offers

Topics covered in this section are:	
4.1	What is a standing offer? (page 45)
4.2	Coordinated Procurement Arrangements (eg whole of Government) (page 45)
4.3	How do I manage a panel? (page 46)
4.4	Managing an official order under a panel arrangement (page 48)

4.1 What's a standing offer?

There are many goods or services your entity will need to use in an ongoing or ad hoc way. For example, training, professional services, scribing, office supplies, etc. A standing offer is a convenient and flexible way to address this need.

A deed of standing offer (DoSO) is an agreement whereby a supplier offers goods or services for a fixed period, at agreed pricing or rates and on agreed terms. An entity can then order those goods or services when required. Standing offer arrangements are generally established by an open procurement process. In most cases, more than one supplier will be identified as providing value for money. Where multiple suppliers are selected, this is commonly called a 'panel'. Generally, the DoSO will be the same for each supplier.

When an entity requires goods or services, they will need to request a quotation from a supplier(s). If a quote is acceptable and represents the best value for money, then the entity will send an official order to the supplier for the goods or services. The official order is the contract between your entity and the supplier.

The deed of standing offer plus the official order will set out the terms and conditions of that contract (usually standard terms set out in the DoSO, plus the specific requirements contained in the official order). It is important to use the official order template identified by the DoSO to ensure the terms and conditions of the overarching arrangement apply to the individual procurements.

Over the life of the standing offer, many individual contracts may be formed. The deed of standing offer will require an official order to be issued for every purchase from a standing offer.

Standing offer arrangements are efficient and minimise costs to procuring entities and suppliers, as there is no longer need for separate tender processes for the same or similar goods or services. Also, new contractual terms do not need to be negotiated for every purchase.

4.2 Coordinated Procurement Arrangements (eg whole of Government)

In some circumstances, the Government initiates the establishment of a Coordinated Procurement Arrangement (eg whole of Government panel). These can be established to:

- support policy decisions
- collectively procure goods or services in common use across entities to leverage the purchasing power of the Australian Government
- improve consistency and control
- deliver savings and efficiencies.

Whole of Government arrangements may take the form of a contract or standing offer. Lead entities, including the Department of Finance and the Digital Transformation Agency, have established several of these arrangements.

Contract management processes vary for different arrangements. If you are managing your entity's purchasing through a whole of Government arrangement, we recommend talking to the panel management team to get an understanding of your obligations.

Use of most whole of Government arrangements are mandatory for non-corporate Commonwealth entities and opt in for corporate Commonwealth entities. A list of these can be found on the Department of Finance website. https://www.finance.gov.au/procurement/whole-government-procurement/.

4.3 How do I manage a panel?

You can find details of panels listed on AusTender. All panels are listed under a standing offer notice (SON).

If the panel has a panel ID then it is managed under the Dynamic Sourcing for Panels (DS4P) tool within AusTender. DS4P is functionality within the AusTender website that provides government buyers with a standard and streamlined approach to sourcing their goods or services from panels.

DS4P allows panel managers to:

- create and manage panels in a consistent way (regardless of panel type)
- update panel information in real time
- communicate updates and changes to suppliers and participating entities.

As a procuring entity, you can use DS4P to:

- get real time information on procurement activities and trends for panels you both own and access
- identify panels that match your requirements
- search for and shortlist relevant suppliers
- access panel documents and templates
- run request for quotation processes.

This reduces the amount of effort required from a panel manager as they do not have to manually distribute panel documentation upon request from panel users.

Many entities are transferring existing panels to DS4P to benefit from the functionality. It is strongly recommended that new panels utilise the DS4P to assist in panel management and improve the user experience.

Panel management is a form of contract management. As a panel manager, the key activities you should undertake are listed below.

4.3.1 Establish regular communication with panel suppliers and users

You should ensure panel users:

- are aware the panel exists
- understand what goods or services can be provided to them under the panel
- are aware of the processes for placing orders.

You should ensure suppliers:

- understand the processes used to select a panel member for work
- have information to help them manage workloads and resourcing (eg advice on anticipated workflows, upcoming potential opportunities, or changes in the business environment of the procuring entity that could affect the quantity or timing of orders placed under the panel).

4.3.2 Provide guidance to users on how the panel operates

Provide accessible and up-to-date guidance to panel users, including:

- what goods or services they can access under the panel
- supplier pricing
- how to place orders
- supplier contact details.

The DS4P tool allows panel managers to communicate this information effectively to panel users. If your panel is not on DS4P then you should develop a communications strategy for panel users.

4.3.3 Monitor and review the panel's operation

Monitoring and reviewing a panel's operation will provide you with information to:

- support decisions about supplier performance
- understand whether the panel is an effective way for your entity to procure its goods or services
- understand whether you should extend or renew the panel
- identify opportunities for improving the overall management and use of the panel.

Key areas of monitoring and review relevant to panel arrangements include:	
a.	Reviewing how users use the panel to obtain goods or services including whether users are keeping their purchases within the scope of the panel. DS4P can help you to get certain data to assist in this process.
b.	Monitoring the performance of suppliers in delivering goods or services including meetings to discuss performance.
c.	Collecting data about panel usage, for example, the number and value of individual contracts entered into under the panel arrangement, and the number of contracts awarded to different suppliers.
d.	Seeking and considering both supplier and user views on how your entity administers the panel, including options for improvement.

4.3.4 Consider any options for extending the term of the panel

Standing offers often include extension options. To extend a panel, you need to determine if:

- your entity still needs the goods or services provided by the panels and
- whether the extension provides value for money

If you choose to extend the panel, you should:

- follow the requirements of the deed of standing offer
- communicate with any entities who regularly use the panel to inform them of your plan to extend.

If you choose not to extend the panel, you should:

- find new arrangements for goods or services you still need
- communicate with any entities who regularly use the panel to inform them the panel is ending.

When extending panels for digital or ICT goods or services you should apply for certification of the panel from the Digital Transformation Agency (DTA) under the Digital Sourcing Panel Policy. See the DTA website for more information.

4.3.5 Maintain proper documentation

Maintaining proper documentation for a panel arrangement includes:

- the rationale for establishing the panel
- supplier meetings
- performance reviews
- records of panel usage
- records of decisions on panel extensions
- deeds of standing offer with each panellist

These records should be able to demonstrate the panel is not being used to avoid competition or to discriminate against suppliers.

Each panel user must also keep details of individual contracts with suppliers.

4.3.6 Allowing others to use your panel

Other entities can access your standing offer if you included wider access in the original approach to market documentation.

If the panel arrangement is loaded onto DS4P, access for all eligible entities is automatically available and the panel manager generally does not need to take further action. If not loaded onto DS4P, the panel manager will need to arrange access to documentation for each eligible entity wanting to use the standing offer arrangement.

If you receive a request from another entity to access your standing offer, you must:

- ensure the documentation issued to the market during panel establishment and deeds of standing offer allow that entity to access the panel
- ensure suppliers agree to the request (if required)
- check the procurements proposed by the joining entity are within the scope of the existing panel arrangement.

If you grant access, you will need to agree on the roles and responsibilities of each entity, including:

- how the added entity will access the panel
- how the panel will be administered with regard to payment and any reporting requirements
- how feedback to the suppliers will be managed.

In some cases, an entity added to a panel arrangement will need to:

- complete a 'Notice of Inclusion' with each supplier they intend to contract with (through an official order), so the overarching terms of the standing offer apply to them
- confirm their ability to contract using a standing offer through other documented means, such as a MoU.

Notice of Inclusion

When accessing a standing offer, you may need to sign a notice of inclusion (NOI) (sometimes called an instrument of acceptance) with the supplier so your entity is covered by the provisions of the deed of standing offer. Your entity will only need to do this once with each supplier's standing offer. If you are unsure whether your entity needs to do this, contact your central procurement area or the panel manager.

If in doubt, sign a NOI for your procurement before you sign your official order to ensure you are covered by the terms of the specific deed of standing offer.

4.4 Managing an official order under a panel arrangement

Once a panel is established, you can purchase goods or services from the panel using the processes and documentation set out in the panel.

If you send an official order for goods or services to a supplier under the panel, this will form a contract between you and the supplier.

Depending on the setup of the panel, the issuer of the official order will need to manage:	
a.	The delivery of the goods or services including any acceptance requirements.
b.	Any performance management requirements under the panel including the reporting of any non-compliance or performance issues to the panel managers.
c.	The verification and/or payment of invoices.
d.	Supply other reporting obligations, under the panel, to the panel managers.

To manage an official order under a panel, you will need to complete the same contract management activities identified in this guide. It is important to remember to keep the level of effort required for management proportionate to the size and complexity of your purchase.

Appendix 1. Common contract provisions

Every contract must include provisions to protect the interests of the Australian Government and as the person responsible for contract delivery, you need to understand the intent and consequences of all the provisions included in your contract.

When managing a contract, it is vital that you are familiar with the specific provisions in your contract that relate to these common contract provisions.

If you have an issue that arises around these provisions, you should rely solely on the terms and conditions within your contract and seek advice from your legal advisers or your central procurement area.

1. Access to premises, systems and records

A contract may grant a supplier access to the Commonwealth's premises, records or systems, so the supplier can fulfil its obligations under the contract. The contract details the scope of the access rights and the obligations of the parties in relation to such access. The Commonwealth will usually retain the right to withdraw the supplier's access to its premises and systems, or to require the return of any records. The contract also usually places obligations on the supplier to ensure that its personnel comply with the relevant policies, work health and safety and security requirements of the procuring entity when accessing the facilities. Access to the Commonwealth's premises may require supplier personnel to hold an access pass or complete security vetting processes.

Government contracts generally provide for people authorised by the procuring entity to have access to the supplier's premises and records associated with the contract, and to subcontractors (if relevant) premises and records. This is typically required for reasons such as:

- monitoring quality and performance
- as part of the payment, accountability and transparency requirements
- for reviewing subcontractor's conditions of engagement and compliance with policies.

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to access to premises, systems and records.

When granting a supplier's personnel access to premises, systems and records, you must ensure that any requirements contained in the contract provisions are strictly adhered to. For example, you may need to seek confirmation from the supplier as to the security clearances held by its personnel, or make arrangements for supplier personnel to receive appropriate IT briefings before they are permitted to access any internal system.

When seeking access to a supplier's premises or records, pay careful attention to any requirements for notices to the supplier, permitted use of records, or other conditions that are contained in the contract provisions.

2. Assistance provided to the supplier

Suppliers are often provided assistance with access to government equipment, information or data to facilitate the delivery of goods or services and the level of assistance to the supplier can affect the final price of the contract.

Where assistance is provided to a supplier under a contract, the nature of that assistance must be clearly identified in the contract and usually addresses:

1. what is to be provided to the supplier
2. the manner, place and times for providing the assistance
3. allocation of ownership and risk, including responsibility for any maintenance, inspection and testing, as well as any audit or stocktake requirements
4. any limitations on use, storage, transfer of possession, ownership, marks/plates or modification
5. identification of the party responsible for loss, damage, or replacement, including fair wear and tear
6. return, transfer or destruction at the end of the contract.

When managing a contract, it is vital for you are familiar with the specific provisions **in your contract** that relate to the assistance to be provided to the supplier.

The Commonwealth is obliged to provide the supplier with all assistance that is stipulated in the contract and you must make suitable arrangements for this to occur. If you fail to provide that assistance in the agreed manner, at the contracted time and place there may be serious consequences for the delivery of the contract and may place the Commonwealth at risk of being in breach of contract. You should also make suitable arrangements to verify that any equipment, information or data provided to the supplier under the contract is properly managed, handled, stored, used, returned or disposed of according to the provisions of the contract.

3. Insurance

For most transactional, routine and complex contracts, the Commonwealth expects the supplier to propose and maintain a prudent level and type(s) of insurance appropriate to the risks and complexities of the goods or services being procured. For strategic contracts, the Commonwealth may require the supplier to obtain and maintain a particular level and/or type of insurance, or may allow the supplier to propose and maintain a prudent level and type(s) of insurance appropriate to the risks and complexities of the goods or services being procured.

The contract provisions usually provide the Commonwealth with the right to seek confirmation of the type and level of insurance held by the supplier, and to seek evidence that the insurance is being maintained. The contract provisions may also specify a period for which the insurance is to be maintained by the supplier, which may sometimes extend past the completion of the contract (eg professional indemnity insurance, defects insurance).

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to the insurance to be maintained by the supplier.

You should establish systems and processes to seek evidence that the agreed level and type(s) of insurance has been obtained by the supplier, and that this is maintained over the period specified in the contract.

4. Intellectual property rights

Intellectual property (IP) rights include various classes of rights covered by legislation including copyright, patents, registered designs and trademarks.

Contracts will include provisions to deal with the ownership and rights to use IP rights in material created under or otherwise relevant to the performance of the contract. These provisions usually consider 'new' material created under the contract (sometimes called foreground IP), as well as material that was previously created outside the contract that is incorporated in the deliverables under, or required for the performance of, the contract (sometimes called background IP). These provisions can be quite complex, as they need to consider material created by the supplier, material created by third parties (such as subcontractors of third party vendors), material created jointly by the supplier and the Commonwealth, as well as material provided by the procuring entity.

Intellectual property rights is a complex area of law and you should consider separate legal advice if the contract will involve significant intellectual property issues.

5. Key personnel (specified personnel)

In contracts dealing with the provision of professional services, the skills, qualifications or experience of particular people may be critical to the value for money assessment and the provision of the contract deliverables by the supplier. In such cases, the contract will contain provisions that these specified personnel perform particular roles in relation to the contract. The contract will also contain arrangements to replace specified personnel if necessary. This often includes arrangements for the procuring entity to approve replacement personnel. If certain minimum skills, qualifications or experience are required to be held by specified personnel, these will also be stated in the contract.

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to key personnel or specified personnel.

You should establish systems and processes for determining that the work has been performed by an approved person and that the personnel performing the work have the required skills, qualifications or experience as laid down in the contract. You should also confirm with the supplier that qualifications or accreditations held by key personnel are current.

6. Liabilities and indemnities

An indemnity is a contract provision that allocates liability between the parties and is generally expressed in the form of one party indemnifying the other for a particular type of liability.

6.1. Granting indemnity to the supplier

Indemnity provisions that provide for your entity to accept the risk of specified losses or damage the supplier may incur or suffer, can have significant legal, policy and financial implications. In many situations, you must obtain approval from a relevant delegate to provide indemnity to a supplier. An example of this type of indemnity is when booking a venue for a meeting, most venue contracts require the hirer (in this case the Commonwealth) to indemnify the venue owner for any damage to the premises caused by attendees at the function. **You should seek legal and insurance coverage advice before giving an indemnity to the supplier.**

6.2. Receiving indemnity from the supplier

Many Commonwealth contracts contain an indemnity from the supplier to the procuring entity that makes the supplier liable for loss, damage or expenses incurred by the procuring entity as a result of the actions of the supplier or their subcontractors. An example of this type of indemnity is a requirement for the supplier to cover costs incurred for a training program if the supplier cancels that program (eg venue deposits, catering costs, travel costs for participants from interstate). A significant issue is whether the supplier's liability should be capped or limited. Any decision to cap or limit a supplier's liability should be based on a formal risk assessment. **This is a complex area of law, and you should seek legal advice if any issues arise in connection with indemnities from the supplier.**

6.3. Contingent liabilities and liability caps

Contingent liabilities are commitments that may give rise to a cost as a result of a future event. The PGPA Act section 60 applies to indemnities that create contingent liabilities. Typical liabilities are:

- An indemnity is a legally binding promise whereby the Commonwealth undertakes to accept the risk of loss or damage another party may suffer.
- A guarantee is a promise whereby the Commonwealth assumes responsibility for the debt, or performance obligations of, another party on default of its obligations.
- A warranty is a promise whereby the Commonwealth provides certain assurances to the other party to an arrangement.

Where an arrangement doesn't explicitly allocate liability, this may be determined at general law. To create certainty, a liability regime may be agreed and set out in a contract. This allocation of risk between parties on the occurrence of a future event creates contingent liabilities.

In some instances, your contract may include a liability cap. A liability cap does not necessarily create a contingent liability. A liability cap should be treated as an indemnity involving a contingent liability, if:

- it involves limiting a supplier's contingent liability to a third party so the Commonwealth is liable to the third party for any excess above that cap or
- limiting a supplier's exposure for damage the supplier has suffered itself, so the Commonwealth is liable to the supplier for any excess.

This is a complex area of law and you should always seek legal advice.

Want to know more about Indemnities?

Download the *Resource Management Guide No.414 Guidance for Commonwealth entities on Indemnities, guarantees and warranties* from http://www.finance.gov.au/resource-management/index/rmg/.

7. Securities and guarantees

In some situations, it may be necessary to obtain some form of guarantee or security for the supplier's performance. These can take a variety of forms. The two most common being:

- Financial: these are often provided by a bank or other financial institution and entitle the procuring entity to obtain a specified amount of money directly from the provider of the guarantee to cover the procuring entity's costs or other amounts due under the contract, should the supplier fail to perform its contractual obligations.
- Performance: in which a third party agrees to take responsibility for performing the contract when required to do so by the procuring entity, usually in the event of a default by the supplier.

Securities and guarantees are useful where significant amounts of money are involved or where an upfront substantial payment is to be made to the supplier prior to delivery and acceptance of the goods or services. They are also common where the supplier is a subsidiary – with the parent company providing the guarantee.

This is a complex area of law, and you should seek legal advice before seeking to claim on any form of security or guarantee.

8. Subcontracting

In relation to subcontracting, the contract provisions usually require the supplier to:

- provide full details of any subcontractors it proposes to engage
- inform relevant subcontractors that the subcontractor's participation in fulfilling a contract may be publicly disclosed and obtain the subcontractor's agreement to the public disclosure
- seek approval from the procuring entity before engaging subcontractors
- acknowledge that the supplier retains responsibility for ensuring that subcontractors perform all their obligations
- flow down certain obligations to the subcontractor from the supplier's contract
- retain responsibility for ensuring that subcontractors comply with all relevant Australian Government policies.

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to subcontracting.

You should establish systems and processes for determining that the supplier has complied with the obligations relating to subcontracting that are contained in the contract.

9. Warranties and fitness for purpose

Warranty provisions cover your rights and obligations and those of the supplier in relation to defects that may be identified in the goods or services after delivery.

Warranties may provide contractual rights for you to:

- reject goods and be paid a refund
- have defects repaired
- have the goods or services replaced.

Generally, contracts stipulate the time period after the acceptance of goods or services in which you can make a claim for warranty action.

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to warranties and fitness for purpose.

You should promptly and diligently review the delivery and acceptance of **goods** to ensure that you have received the correct items in the right quantity, in good repair, at the agreed time and in accordance with any other contractual provisions (eg packaging, location for delivery). You may need to use a suitable technical adviser to assist you to determine if the goods meet the contract specification. Some entities may have a formal quality control or quality inspection process which will provide advice about the acceptance of goods.

If the contract is for delivery of **services**, the contract manger should promptly compare the services that have been delivered to the service standards contained in the contract to ensure that the contractual requirements have been met. This may involve seeking feedback from user representatives or gathering direct evidence about the standard of services by methods such as site inspections, spot checks or other forms of service audit.

If goods or services need to comply with an Australian or international standard, you must make reasonable enquiries to determine compliance with that standard. This includes gathering evidence of relevant certifications and periodic auditing of compliance by an independent assessor (see CPRs paragraph 7.26).

If the goods or services do not meet the expected standard, you must strictly adhere to the contract provisions, particularly, provisions on:

- the rejection of goods or services, paying particular attention to the time frame for accepting or rejecting the goods or services
- notices that must be given to the supplier
- any time periods that apply for the supplier to remedy the defects
- any impact that the defects may have on the amounts payable under the contract.

10. Confidentiality

Confidential information is usually a defined term in a contract and will have a definition similar to information that is by its nature confidential and which is designated by a party as confidential and which the parties know, or ought to know, is confidential. Information that is already or becomes public knowledge other than by a breach of the contract is not regarded as confidential information.

Confidentiality provisions in a contract prevent the supplier from divulging any Commonwealth confidential information to a third party without the prior written consent of the Commonwealth. Contracts also usually contain a reciprocal provision that prevents the Commonwealth from divulging any of the supplier's confidential information without prior written consent. The provisions usually require the supplier and its subcontractors to provide a written non-disclosure agreement (sometime called a deed of confidentiality) at the Commonwealth's request. Sometimes there are exceptions to the obligation of confidentiality, for example when the information is otherwise in the public domain, is disclosed to legal advisers for the purpose of complying with obligations or exercising rights under the contract or when required for the Australian National Audit Office (ANAO), the Minister or the Parliament.

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to confidentiality and exceptions. These provisions can be complex and it is advisable to take legal advice if any issues arise.

You must ensure that any actions taken in relation to confidentiality are consistent with the contract provisions. You must strictly adhere to any form and content requirements contained in the contract for notices, permissions and undertakings in relation to confidentiality.

11. Protection of personal information and data protection

Personal information is defined in the Privacy Act (Cth) 1988 (Privacy Act) to mean information or an opinion about:

- an identified individual or
- an individual who is reasonably identifiable

Whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.

Contracts will contain provisions that prevent the supplier from collecting, using, storing, transferring or divulging personal information in a way that is contrary to the provisions of the contract or the Privacy Act. These provisions will usually require the supplier to provide the Commonwealth with a copy of the supplier's and any sub contractor's privacy policy, security and data protection policy and any processes implemented by the supplier and the subcontractor(s) to comply with the Privacy Act. Even if a supplier is not covered by the Privacy Act (for example, because its turnover does not meet the threshold), the supplier will be required to comply with the relevant provisions of the contract.

When managing a contract, it is vital that you are familiar with the specific provisions **in your contract** that relate to protection of personal information and data breaches. These provisions can be complex, and routinely refer to provisions of the Privacy Act, so it is advisable to seek legal advice if any issues arise.

You must have proper processes and procedures in place to request, receive and review the supplier's and subcontractor's policies and processes if the provisions of the contract require this. You may need to take specialist advice on whether these policies and procedures are adequate to protect against privacy and data risks, and decide how to manage any risks that arise in this area.

Appendix 2. Glossary

Accountable Authority means, Under the PGPA Act, the person or group of persons responsible for, and has control over, a Commonwealth entity's operations. This is usually the Secretary of a department and is defined in the PGPA Act section 12.

Accountable Authority Instructions are written instructions issued by an accountable authority giving direction and guidance to their officials on matters relating to finance law and regulations (Accountable authorities may also issue instructions to officials of another Commonwealth entity in relation to matters listed in the PGPA Act section 20A(2)).

AusTender is the central web-based facility for publishing Australian Government procurement information, including business opportunities, annual procurement plans and contracts awarded.

Central procurement area means the area within your entity that is responsible for issuing internal procurement advice and monitoring procurement activity performed by your entity. This may be a dedicated team or could be a function of your entity's Central Financial Officer (CFO).

Commonwealth entities means non-corporate Commonwealth entities and corporate Commonwealth entities that are subject to the PGPA Act (defined in the PGPA Act section 10). A list of Commonwealth entities is on the Department of Finance website at: https://www.finance.gov.au/resource-management/governance/**.**

(The) Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance under the PGPA Act section 105B(1). Officials from non-corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in the PGPA Rule section 30 must comply with the CPRs when performing duties related to procurement. The CPRs are the core of the Commonwealth procurement policy framework.

Conflict of interest declaration means a form on which a person will disclose any real/apparent/potential conflicts of interest that exist or may arise in the course of their employment and is signed by that person as a declaration.

Deed of confidentiality: A deed is a special type of binding promise or commitment to do something. A deed of confidentiality is a commitment to keep certain information, shared from one party to another, confidential and to use that information only as intended within the contract.

Delegate means (in relation to the PGPA Act) an official who has been given statutory authority, by an instrument of delegation, to make particular decisions or perform particular functions. A delegate is constrained by any limitations expressed in the delegation instrument.

Dynamic Sourcing for Panels (DS4P) is functionality within the AusTender website that provides government buyers with a standard and streamlined approach to sourcing their goods or services from panels.

Key performance indicators (KPIs) means a metric that is measurable and verifiable that, at a point in time, will provide an indication of the level of performance by the supplier against the outcomes of the contract.

Not required means, within the contract activity table used in this guide, that the activity is not necessary for a contract at this level of complexity.

Required means, within the contract activity table used in this guide, that the activity be performed for a contract that has been categorised at this level of complexity.

Recommended means, within the contract activity table used in this guide, that the activity is recommended for a contract that has been categorised at this level of complexity but is not mandatory. You should use judgement to determine if you need to perform the activity for your contract, and if so, the extent to which the activity will be performed.

Resource Management Guides (RMG) are a series of policy documents that detail policies dealing with resources management. These policies form part of the Government Resource Management Framework. Details of these policies are on the Department of Finance web site at: https://www.finance.gov.au/resource-management/index/rmg/.

Service level agreements (SLAs) are documented levels of service that will be provided by the supplier and are usually measured in terms of quality, availability or responsiveness.

Statement of Tax Record (STR) is required for contracts over $4m under the Black Economy Procurement Connected Policy- Increasing the integrity of Commonwealth Government procurement. This policy requires that a supplier holds a valid and satisfactory STR at the time of contract award and may be required to maintain a satisfactory STR for the duration of the contract (see the Department of the Treasury website).

Strongly Recommended means, within the contract activity table used in this guide, that the activity is recommended for a contract that has been categorised at this level of complexity. The activity, whilst it is not mandatory, is generally good contract management practise and may provide significant benefits to the management of that contract. You should use judgement to determine if you need to perform the activity for your contract, and if so, the extent to which the activity will be performed.

Value for Money is the consideration of the relevant financial and non-financial costs and benefits of each submission including, but not limited to:

a. the quality of the goods and services
b. fitness for purpose of the proposal
c. the potential supplier's relevant experience and performance history
d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement)
e. environmental sustainability of the proposed goods and services (such as energy efficiency and environmental impact) and
f. whole-of-life costs.

For more information, refer to CPRs section 4.